OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR — Occupational Safety and Health Administration

DIRECTIVE NUMBER: 2015-03 (CPL 2) | **EFFECTIVE DATE: 10/01/2014**
SUBJECT: Local Emphasis Program for Dairy Farm Operations
REGIONAL IDENTIFIER: Region II

ABSTRACT

Purpose: This Notice establishes a Local Emphasis Program (LEP) for the programmed inspection of the dairy farming industry.

References:
A) CPL 04-00-001, Procedures for Approval of Local Emphasis Programs (LEPs)
B) CPL 02-00-150, Field Operations Manual (FOM)
C) CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act
D) CPL 02-00-025, Scheduling System for Programmed Inspections

Action Offices: Buffalo, Syracuse, and Albany Area Offices – Region II

Originating Office: Syracuse Area Office

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201 Varick Street, Rm.670
New York, NY 10014

By and Under the Authority of

Robert D. Kulick
Regional Administrator

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I. **Purpose.** The purpose of this Notice is to establish a Local Emphasis Program (LEP)for programmed inspections of establishments within the dairy farming industry having operations classified as dairy cattle and milk production under the North American Industry classification System (NAICS) code 11212, in accordance with the provisions of OSHA Instruction Number CPL 04-00-001, Procedures for Approval of Local Emphasis Programs (LEPs).

II. **Scope.** The Notice applies to the jurisdictional area of the Buffalo, Syracuse and Albany Area Offices of the Occupational Safety and Health Administration in the State of New York. Inspections will focus on the common hazardous dairy farm activities (discussed in this LEP) which are conducted by farm employees. Inspections conducted under this LEP will normally be classified as comprehensive safety inspections.

III. **Expiration.** This Notice expires on September 30, 2015.

IV. **References.**

A. OSHA Instruction CPL 04-00-001, November 10, 1999, Procedures for Approval of Local Emphasis Programs (LEPs)

B. OSHA Instruction CPL 2-00-150, April 22, 2011, Field Operation Manual (FOM)

C. OSHA Instruction CPL 02-00-051, May 28, 1998, Enforcement Exemptions and Limitations Under the Appropriations Act

D. OSHA Instruction CPL 02-00-025, January 4, 1995, Scheduling System for Programmed Inspections

E. OSHA 29 CFR 1928, Occupational Safety and Health Standards for Agriculture

F. OSHA 29 CFR 1975, Coverage of Employees under the Williams-Steiger OSH Act of 1970

G. Field Hazard Bulletin, Evaluating Dairy Farm Operations LEP Inspection Hazards – Eau Claire Area OSHA Office.

H. [1]United State Department of Agriculture; New York Historical Dairy Statistics, Milk Production data http://www.nass.usda.gov/Statistics_by_State/New_York/Historical_Data/index.asp

I. [2]New York State College of Agriculture and Life Science, Department of Agricultural Economics, [Knoblauch and Putnam]: New York Dairy Industry Overview November 1985 Table 1 New York Milk Production and Income 1970 – 1984. http://dyson.cornell.edu/research/researchpdf/sp/1985/Cornell-

Dyson-sp8535.pdf

J. [3]Cornell University/College of Agriculture and Life Science, School of Applied Economics and Management, [Maloney and Bills]: Survey of New York Dairy Farm Employers 2009. http://ageconsearch.umn.edu/bitstream/121569/2/Cornell-Dyson-rb1101.pdf

K. WHD 29 CFR 780.308, Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects Under the Fair Labor Standards Act.

V. **Definitions.**

A. Farming operation means any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.

B. Agricultural employer means any person engaged in agricultural activity employing one or more employees. Members of the immediate family of the farm employer are not regarded as employees.

C. Immediate family member means those in direct relation to the farm employer such as a parent, spouse, or child. Step-children, foster children, step-parents and foster parents will also be considered as immediate family members. Other relatives, even when living permanently in the same household as the employer, will not be considered to be part of the immediate family. Reference: Fair Labor Standards Act, 29 CFR 780.308 "Definition of immediate family" regarding exemptions under minimum wage and overtime provisions.

D. Agricultural tractor means a two or four-wheel drive type vehicle, or track vehicle, of more than 20 engine horsepower, designed to furnish the power to pull, carry, propel, or drive implements that are designed for agriculture. All self-propelled implements are excluded.

E. Low profile tractor means a wheeled tractor possessing the following characteristics:

   i. The front wheel spacing is equal to the rear wheel spacing, as measured from the centerline of each right wheel to the corresponding left wheel.

   ii. The clearance from the bottom of the tractor chassis to the ground does not exceed 18 inches.

iii. The highest point of the hood does not exceed 18 inches.

iv. The tractor is designed so that the operator straddles the transmission when seated.

F. ROPS means roll-over protective structures.

G. Farm field equipment means tractors or implements, including self-propelled instruments, or any combination thereof used in agricultural operations.

H. Farmstead equipment means agricultural equipment normally used in a stationary manner. This includes, but is not limited to, materials handling equipment and accessories for such equipment whether or not the equipment is an integral part of a building.

I. Ground driven components are components which are powered by the turning motion of a wheel as the equipment travels over the ground.

J. Power take-off shafts are the shafts and knuckles between the tractor, or other power source, and the first gear set, pulley, sprocket, or other components on power take-off shaft driven equipment.

K. Temporary in OSHA regulation Temporary labor camps (29 CFR 1910.142) refers to employees who enter into an employment relationship for a discrete or defined time period. The term "temporary" refers to the length of employment, and not to the physical structures housing employees.

L. Temporary labor camp means farm housing directly related to the seasonal or temporary employment of farm workers.

i. Housing includes both permanent and temporary structures located on or off the property of any employer who meets the definition of a "farming operation".

ii. Temporary labor camp housing means required employer-provided housing that, due to company policy or practice, necessarily renders such housing a term of condition of employment.

VI. Background.

A. History:

The dairy cattle and milk production industry in New York has experienced drastic changes over the last several decades. The number of dairy farms in New York has steadily decreased from approximately 28,000 in 1970 to approximately 5,600 in 2007

(80% reduction)[1,2]. As of 2007, there was reported to be approximately 5,683 dairy farms in New York[1,2]. Along with steep decline in the number of dairy farms there has been an increase in the productivity (measured in millions of pounds of milk produced annually) from approximately 10.3 billion pounds in 1970 to approximately 12.1 billion pounds in 2007 (17% increase) [1,2]. The result has been an increase in the hiring of outside labor to manage the larger herd sizes on the remaining farms[3].

Cornell University – College of Agriculture and Life Sciences estimated that the total number of hired workers approached 9,600 based on a dairy farm worker survey conducted in 2009[3]. As a result of this survey, the College of Agriculture and Life Sciences was able to report approximately 2,600 of these hired workers were of Hispanic origin, resulting in language issues and barriers[3]. In addition, the study also showed that 85% of the dairy farms hired 3 or more workers and 45% of the dairy farms hired 10 or more workers and 76% of those employees worked more than 40 hours per week[3]. In addition, approximately 73% of Hispanic dairy farm workers struggled with the English language, with 30% of those employees having no skills in the English language[3].

B. Hazards:

Traditionally, OSHA involvement in dairy farm operations has been limited to responding to reports of fatality events from law enforcement agencies. Several factors surrounding the lack of hazard reporting by employees and employers (in the event of work place fatalities) likely include public misconceptions about OSHA jurisdiction within the farming industry and workforce language barriers.

Since December of 2007, following notification and determination of jurisdiction, New York Area OSHA Offices have conducted 4 fatality inspections at several establishments. These inspections are:

> Inspection #311614432 – 12/28/07, a 23 year old employee was ran over by a feed Truck in the barn. Serious citations were issued under 1928.57(a)(6) and 1928.57(a)(6)(iv) as a result of the inspection activity.
>
> Inspection #315004135 – 11/10/10, A worker, for cleaning purposes, entered a tanker truck used to haul manure and was overcome by methane gas. The second individual entered the tanker truck in an attempt to rescue the worker. The initial entrant was revived and survived; however, the 27 year old individual attempting to provide rescue services succumbed to the methane gas and died of asphyxiation. The deceased individual was a family member of the owner and was not an employee.
>
> Inspection #314351354 – 03/21/11, a 46 year old employee was working alone in the cow barn, pushing cows toward the milking parlor. Employees working in the milking parlor discovered deceased employee in the cow barn, inside the gate. He

was unresponsive and laying on his back. Cows were in the area. The employee was crushed and killed by the cows. No citations were issued relating to the cause of the fatality due to a lack of employer knowledge. The case involved a migrant worker with language issues.

Inspection #191309 – 11/28/12, a 42 year old employee was struck by the bucket of a skid steer in east end of Barn Pen 23. Serious citations were issued under 1928.57(a)(6) and 1928.57(a)(6)(iv) as a result of the inspection activity.

In addition to the hazards contributing to the fatality events, OSHA has been able to address other hazards within dairy farm operations including serious hazards associated with lack of roll-over protection on tractors, lack of adequate machine guarding, failure to implement hazard communication programs, electrical issues, a lack of first aid supplies including but not limited to emergency eyewashes, unsafe use of formaldehyde, inadequate use of personal protective equipment little or no skid steer loader training, and alteration of skid steer loader safety devices.

This LEP is being implemented to direct OSHA's field inspection efforts to address common hazardous dairy farm activities found throughout dairy farm operations:

1. **Manure Storage Facilities and Collection Structures**:

   Fatal or serious drowning hazards may exist where farm vehicles such as tractors, manure spreading trucks, manure pumps/agitators, and skid-steers are operated in near proximity to waste storage impoundments and structures without the benefit of control measures such as 1) safety stops and/or gates at manure push-off ramps and load-out areas to prevent accidental entry of machinery; and 2) warning signs, fences, ladders, ropes, bars, rails and other devices to restrict the accidental passage of vehicles and personnel across outdoor earthen manure storages.

   Fatal or serious inhalation hazards of gases including hydrogen sulfide (H_2S), carbon dioxide (CO_2), methane (CH_4), and ammonia (NH_3) may exist where manure gases are generated through the handling of liquid or semi-solid manure through activities such as pumping, mixing, agitating, spreading, or cleaning-out. Oxygen (0_2) deficiency hazards are an additional related concern.

   Guidance Documents:

   American Society of Agricultural and Biological Engineers (ASABE) Standard - ASAE EP470 JAN1992 (R2005) Manure Storage Safety.

   CONDUCTING A SAFETY WALK-THROUGH ON A FARM: HAZARDS OF THE MANURE HANDLING SYSTEM, ANAEROBIC DIGESTER, AND BIOGAS HANDLING SYSTEM A SELF-ASSESSMENT GUIDELINE FOR FARMERS

First Edition January 2007

Wisconsin Natural Resources Conservation Service (NRCS) Conservation Practice Standard – Waste Storage Facility Code 313.

2. **Dairy Bull and Cow Behavior / Worker Positioning**:

Fatal or serious crushed-by hazards may exist where employees interact with dairy bulls and cows without appropriate training on dairy bull and cow behavior and/or work in areas where there is an increased likelihood of becoming caught between the animals and a fixed or moving structure such as a fence, corral, opening gate, crowd gate, etc.

Guidance Documents:

Division of Cooperative Extension of the University of Wisconsin-Extension and other States' Cooperative Extension Program documents.

3. **Electrical systems:**

Electrocution and electrical shock hazards may exist where employees interact either: 1) making direct contact with improperly installed, improperly maintained, or damaged electrical systems on equipment such as disconnects, switches, circuit-breakers, pumps, fans, augers, fences, etc.; or 2) making indirect contact with overhead or buried power lines with farm equipment such as tractors, skid steers implements, portable augers, grain probes, ladders, poles, rods, irrigation pipes, etc.

Guidance Documents:

The National Fire Protection Association (NFPA) NFPA 70: National Electrical Code

The National Fire Protection Association (NFPA) NFPA 70E: Standard for Electrical Safety in the Workplace

4. **Skid-Steer Loader Operation:**

Fatal or serious crushed-by, struck-by, caught in-between, rollover hazards may exist where employees are: 1) improperly trained on operating, servicing, or maintaining skid-steer loaders according to the manufacturer's instructions; 2) failure to use approved lift arm support devices when servicing or maintaining the skid-steer loader; and 3) intentional bypassing of safety features of the skid-steer loader such as back-up alarms, seat belts, and control interlock systems.

Guidance Documents:

Manufacturer's skid-steer loader operator manual and instructions

The Association of Equipment Manufacturers (AEM) Safety - Manual for Operating and Maintenance Personnel, Skid-Steer (2006).

Division of Cooperative Extension of the University of Wisconsin-Extension and other States' Cooperative Extension Program documents.

5. **Tractor Operation:**

Fatal or serious fall, struck-by, caught in-between, and/or rollover hazards may exist where employees are improperly trained on operating, servicing, or maintaining tractors.

Regulatory Information:

29 CFR 1928.51(b)(1): Roll-over protective structures (ROPS). ROPS shall be provided by the employer for each tractor operated by an employee. Note: Applies to agricultural tractors manufactured after October 25, 1976. There are also several exceptions for low profile tractors which exempt ROPS and seatbelts, see 1928.51(b)(5).

29 CFR 1928.51(b)(2): Seat belts.

29 CFR 1928.51(d): Operating instructions. Every employee who operates an agricultural tractor shall be informed of the operating practices contained in Appendix A of this part and of any other practices dictated by the work environment. Such information shall be provided at the time of initial assignment and at least annually thereafter.

6. **Guarding of Power Take-Offs (PTOs):**

Fatal or serious entanglement or amputation hazards may exist where power take-off shafts and other related components on farm field and farmstead equipment are not properly guarded.

Regulatory Information for farm field equipment:

29 CFR 1928.57(b)(1)(i): All power take-off shafts, including rear, mid- or side-mounted shafts, shall be guarded either by a master shield, as

provided in paragraph (b)(1)(ii) of this section, or by other protective guarding.

29 CFR 1928.57(b)(1)(ii): All tractors shall be equipped with an agricultural master shield on the rear power take-off except where removal of the master shield is permitted by paragraph (b)(1)(iii) of this section. The master shield shall have sufficient strength to prevent permanent deformation of the shield when a 250 pound operator mounts or dismounts the tractor using the shield as a step.

29 CFR 1928.57(b)(1)(iii): Power take-off driven equipment shall be guarded to protect against contact with positively driven rotating members of the power drive system. Where power take-off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take-off shaft which protrudes from the tractor.

Regulatory Information for farmstead equipment:

29 CFR 1928.57(c)(1)(i): All power-take off shafts, including rear, mid- or side-mounted shafts shall be guarded either by a master shield as provided in paragraph (b)(1)(ii) of this paragraph or other protective guarding.

29 CFR 1928.57(c)(1)(ii): Power take-off driven equipment shall be guarded to protect against employee contact with positively driven rotating members of the power drive system. Where power take-off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take-off shaft which protrudes from the tractor.

7. **Guarding of other power transmission and functional components:**

Fatal or serious entanglement or amputation hazards may exist where other power transmission components on farm field and farmstead equipment are not properly guarded.

Regulatory Information for farm field equipment:

29 CFR 1928.57(b)(2)(i): The mesh or nip-points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded.

29 CFR 1928.57(b)(2)(ii): All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, except smooth shaft ends protruding less than one-half the outside diameter of the shaft and its locking means.

29 CFR 1928.57(b)(2)(iii): Ground driven components shall be guarded in accordance with paragraphs (b)(2)(i) and (b)(2)(ii) of this section if any employee may be exposed to them while the drives are in motion.

29 CFR 1928.57(b)(3): Functional components, such as snapping or husking rolls, straw spreaders and choppers, cutterbars, flail rotors, rotary beaters, mixing augers, feed rolls, conveying augers, rotary tillers, and similar units, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with normal functioning of the component.

29 CFR 1928.57(b)(4)(i): Guards, shields, and access doors shall be in place when the equipment is in operation.

29 CFR 1928.57(b)(4)(ii): Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

A readily visible or audible warning of rotation; and

A safety sign warning the employee to:

Look and listen for evidence of rotation; and

Not remove the guard or access door until all components have stopped.

Regulatory Information for farmstead equipment:

29 CFR 1928.57(c)(2)(i): The mesh or nip-points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded.

29 CFR 1928.57(c)(2)(ii): All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, with the exception of:

Smooth shafts and shaft ends (without any projecting bolts, keys or set screws), revolving at less than 10 rpm, on feed handling

equipment used on the top surface of materials in bulk storage facilities; and

Smooth shaft ends protruding less than one-half the outside diameter of the shaft and its locking means.

29 CFR 1928.57(c)(3)(i): Functional components, such as choppers, rotary beaters, mixing augers, feed rolls, conveying augers, grain spreaders, stirring augers, sweep augers, and feed augers, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with the normal functioning of the component.

29 CFR 1928.57(c)(3)(ii): Sweep arm material gathering mechanisms used on the top surface of materials within silo structures shall be guarded. The lower or leading edge of the guard shall be located no more than 12 inches above the material surface and no less than 6 inches in front of the leading edge of the rotating member of the gathering mechanism. The guard shall be parallel to, and extend the fullest practical length of, the material gathering mechanism.

29 CFR 1928.57(c)(3)(iii): Exposed auger flighting on portable grain augers shall be guarded with either grating type guards or solid baffle style covers as follows:

The largest dimensions or openings in grating type guards through which materials are required to flow shall be 4 3/4 inches. The area of each opening shall be no larger than 10 square inches. The opening shall be located no closer to the rotating flighting than 2 1/2 inches.

Slotted openings in solid baffle style covers shall be no wider than 1 1/2 inches, or closer than 3 1/2 inches to the exposed flighting.

29 CFR 1928.57(c)(4)(ii): Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

A readily visible or audible warning of rotation; and

A safety sign warning the employee to:

Look and listen for evidence of rotation; and

Not remove the guard or access door until all components have stopped.

8. **Hazardous energy control while performing servicing and maintenance on equipment:**

Fatal or serious crushed-by, struck-by, caught in-between, entanglement, or amputation hazards may exist where employees perform maintenance and servicing on farm field, farmstead, or other equipment without a means of immediate and exclusive control of hazardous energy sources by the employee or the employees maintaining or servicing equipment.

Regulatory Information for farm field and farmstead equipment:

> *29 CFR 1928.57(a)(6): Operating instructions. At the time of initial assignment and at least annually thereafter, the employer shall instruct every employee in the safe operation and servicing of all covered equipment with which he or she will be involved, including at least the following safe operating practices: [Note: only related items included]*
>
> > *...Stop engine, disconnect the power source, and wait for all machine movement to stop before servicing, adjusting, cleaning, or unclogging the equipment, except where the machine must be running to be properly serviced or maintained, in which case the employer shall instruct employees as to all steps and procedures which are necessary to safely service or maintain the equipment;*
> >
> > *Lock out electrical power before maintenance or service on farmstead equipment.*

Guidance Documents:

> *Manufacturer's tractor operator manual and instructions*
>
> *The Association of Equipment Manufacturers (AEM) Safety - Manual for Operating and Maintenance Personnel, Agricultural Tractor (1990).*

Additional Regulatory Information for farmstead equipment:

> *29 CFR 1928.57(c)(5)(i): Application of electrical power from a location not under the immediate and exclusive control of the employee or employees maintaining or servicing equipment shall be prevented by:*

Providing an exclusive, positive locking means on the main switch which can be operated only by the employee or employees performing the maintenance or servicing; or

In the case of material handling equipment located in a bulk storage structure, by physically locating on the equipment an electrical or mechanical means to disconnect the power.

Guidance Documents for other equipment not meeting the definition of farm field or farmstead equipment:

Manufacturer's skid-steer loader, wheel loader, etc. operator manual and instructions

The Association of Equipment Manufacturers (AEM) Safety - Manual for Operating and Maintenance Personnel, Skid-Steer (2006).

The Association of Equipment Manufacturers (AEM) Safety - Manual for Operating and Maintenance Personnel, Wheel Loader/Tractor (1991).

9. **Hazard communication:**

Serious chemical ingestion, absorption, splash, fire, or other hazards may exist where hazardous chemicals such as teat dips, hoof care products, sanitization products, etc. are stored, dispensed, and used without appropriate training and information including the availability of Material Safety Data Sheets (MSDSs)/Safety Data Sheets (SDS).

Regulatory Information:

29 CFR 1928.21(a): The following standards in part 1910 of this Chapter shall apply to agricultural operations: [Note: only related item included] *

...1928.21(a)(5) Hazard Communication – 1910.1200

10. **Confined Spaces:**

Serious or fatal chemical asphyxiation, oxygen (O_2) deficiency, inhalation, engulfment, or caught-in hazards may exist where there is entry into grain storage bins, vertical silos, hoppers, manure storage vessels, milk vessels, below grade manure collection systems, etc.

Guidance Document:

ANSI/ASSE Z117.1-2009: Safety Requirements for Confined Spaces

11. **Horizontal Bunker Silos:**

Serious or fatal engulfment or struck-by hazards may exist where employees perform 'facing' activities when removing silage from ground level. Serious or fatal fall hazards may exist where employees climb on top of the silage to place or remove protective plastic covering and anchoring systems.

Guidance Documents:

Penn State College of Agricultural Sciences Cooperative Extension: "Horizontal Silo Safety, E49" (2007).

University of Minnesota Department of Animal Science Dairy Initiatives Newsletter: "Safety in Silage Bunker Silos and Piles" Volume 10 Issue 1 (2001).

12. **Noise:**

Serious hearing loss hazards may exist when working with or around running agricultural equipment.

Guidance Documents:

Penn State College of Agricultural Sciences Cooperative Extension: "Noise Induced Hearing Loss in Agriculture, E48" (2007).

American Conference of Government Industrial Hygienists (ACGIH) Publication #0111: "2011 TLVs and BEIs (2011)".

*Note: 29 CFR 1928.21(a)(1) – (7) incorporates 29 CFR 1910 standards: Temporary Labor Camps (1910.142); Storage and handling of anhydrous ammonia (1910.111(a) and (b))'; Logging 0perations (1910.266); Slow-moving vehicles (1910.145); Hazard Communication (1910.1200); Cadmium (1910.1027); Retention of DOT markings, placards, and labels (1910.1201). The remaining standards covered in Subpart B through T and Subpart Z of part 1910 do not apply to agricultural operations.

C. Jurisdiction

OSHA directive CPL 02-00-51, Enforcement Exemptions and Limitations under the Appropriations Act, sets guidance with respect to limitations for enforcement activity under the Appropriations Act, including farming operations, temporary labor camps, and establishments in certain Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes with ten or fewer total employees.

The Appropriations Act exempts small farming operations from enforcement of all rules, regulations, standards or orders under the Occupational Safety and Health Act if it: 1) Employees employs 10 or fewer employees currently and at all times during the last 12 months (with family members of farm employers not counted when determining the number of employees); and 2) Has not had an active temporary labor camp during the proceeding 12 months. A farming operation with 10 or fewer employees that maintains a temporary labor camp or has maintained a temporary labor camp within the last 12 months is not exempt from inspection.

CPL 02-00-51 defines a "temporary labor camp" as farm housing directly related to the seasonal or temporary employment of farm workers. It also describes "housing" to include both permanent and temporary structures located on or off the property of any employer who meets the definition of a "farming operation".

OSHA Instruction CPL 2-00-150, Field Operation Manual (FOM), defines temporary labor camp housing as required employer-provided housing that, due to company policy or practice, necessarily renders such housing a term of condition of employment. According to current OSHA interpretation, the term "temporary" in OSHA regulation Temporary labor camps (29 CFR 1910.142) refers to employees who enter into an employment relationship for a discrete or defined time period. The term "temporary" refers to the length of employment, and not to the physical structures housing employees.

OSHA inspection activity may include all working conditions covered by OSHA standards except for Field Sanitation (29 CFR 1928.110), and except as noted, Temporary Labor Camps (29 CFR 1910.142), which are enforced by the Wage and Hour Division of the U.S. Department of Labor under Secretary of Labor Order 6-96. Refer to Ch. 10 of OSHA Instruction CPL 2-00-150, Field Operation Manual (FOM), for additional guidance.

OSHA regulation 29 CFR 1975.4(b)(2) states that members of the immediate family of the farm employer are not regarded as employees.

OSHA directive CPL 02-00-150, Field Operations Manual (FOM), discusses applicability of the General Duty Clause and issuance of Part 1910 standards within the agricultural industry sector. Part 1928 sets forth several standards which are applicable to dairy farming operations within the agricultural industry. In addition, Part 1928 also identifies several Part 1910 standards which apply to agricultural operations. Part 1910 standards not listed, do not apply. The General Duty Clause may be used to address hazards not covered by these standards.

Postharvest crop activities performed under SIC 0723 and NAICS 115114 are non-exempt operations under the Appropriations Act. If a small farm has a grain storage structure where: a) grain is fumigated, dried, or processed in a manner addressed under this NAICS or SIC subsequent to its harvest; AND b) the grain is sold (put on the market, instead of being used on the farm for agricultural operations), then OSHA has jurisdiction over the grain handling operations under 29 CFR 1910.272, Grain Handling Facilities.

VII. **Action.** The Buffalo, Syracuse and Albany Area Offices shall use the LEP described

herein as the basis for scheduling inspections to reduce occupational hazard exposure in the dairy farming industry.

VIII. **Program Procedures:** Inspections conducted under the program shall be scheduled and conducted pursuant to the following criteria.

A. Each OSHA Area Office covered by this LEP will compile a list of employer establishments in the following NAICS:

2002 NAICS Code	2002 NAICS Code
Dairy Farms	112120

Establishment source is the www.referenceusagov.com website where a search is performed for all verified and unverified employers with the NAICS 112120. Once this list is made, the verified NAICS will be separated from the unverified.
List #1 will be the Verified NAICS locations
List #2 will be the Unverified NAICS locations

B. When performing programmed inspections under this LEP, each Area Office shall develop an inspection master list of establishments. The National Office policy on List Generation and Randomization shall be followed in accordance with the National Office memorandum to Regional Administrators dated November 12, 2014, *Establishment-Targeting Lists for Emphasis Programs* Each OSHA Area Office will sort both list by city/zip codes within their jurisdiction prior to randomization .Inspection scheduling and deletions shall be done in accordance with 02-00-025, Scheduling System for Programmed Inspections.

A cycle size of three (3) establishments will be used. Once a cycle is begun, it must be finished. Two (2) establishments will be randomly selected from List #1. One (1) establishment will be randomly selected from List #2. If List #2 fails to produce inspections sites that are subject to this LEP, then List #1 will be used in place of List #2.

D. Each Area Office will be responsible for making appropriate deletions to the inspection list, such as establishments that are no longer in business, in accordance with CPL 02-00-025, and establishments that have received a comprehensive inspection within three years of the final order date of the inspection.

E. Every complaint or referral for any dairy farm industry operation, not exempt according to CPL 02-00-051, and where there exists the potential for employee safety and health hazard exposures must be handled per the FOM.

F. The Compliance Officer may discover that outside contractors are also performing work activities within covered dairy farm operations. There may be instances where the Compliance Officer would incorporate the outside contractor into the scope of the inspection in accordance with the FOM.

IX. Inspection Procedures:

A. **Coverage:** Determine if the employer currently has or has had more than 10 employees, not counting immediate family members, or has or had active temporary labor camp activity during the last 12 months.

When considering whether or not temporary labor camp activity exists. The Compliance Officer must consider:

1) Whether there are any elements of the employee/employer relationship which are temporary in nature;

AND

2) Whether those employees are being housed in required employer-provided housing that, due to company policy or practice, necessarily renders such housing a term or condition of employment.

Factors in determining whether housing is a term or condition of employment include situations where:

i. Employers require employees to live in the housing
ii. The housing is in an isolated location or the lack of economically comparable alternative housing makes it a practical necessity to live there.
iii. Additional factors to consider include, but are not limited to:
    1. Cost of the housing to the employee – is it provided free or at a low rent?
    2. Ownership or control of the housing – is the housing owned or controlled or provided by the employer?
    3. Distance from the worksite from the camp, distance to the work-site from other non-camp residences – is alternative housing reasonably accessible (distance, travel, cost, etc.) to the worksite?
    4. Benefit to the employer – does the employer make the camp available in order to ensure that the business is provided with an adequate supply of labor?
    5. Relationship of the camp occupants to the employer – are those living in the camp required to work for the employer upon demand?

B. **Scope:** Inspections under this LEP will focus on common safety and health hazards at dairy farms as discussed in Section V.B. Inspections are to include facilities and operations where farm employees (not counting immediate family members) are engaged in dairy farm operations (i.e. milking parlor, dairy cattle barns, equipment maintenance sheds, storage sheds, manure storage facilities and collection structures, horizontal bunker silos, vertical silos, grain storage structures, etc.)

The inspection scope will not include conditions covered by Field Sanitation (29 CFR 1928.110) or Temporary labor camps (29 CFR 1910.142) regulations. Any concerns or known violations in these areas shall be referred to the Wage and Hour Division of the Department of Labor under Secretary of Labor Order 6-96.

The Environmental Protection Agency (EPA) has jurisdiction over employee protection relating to pesticides (which also includes herbicides, fungicides, and rodenticides). The EPA Worker Protection Standard (WPS), 40 CFR Part 170, protects employees on farms from occupational exposure to agricultural pesticides which includes provisions for personal protective equipment (PPE), labeling, employee notification, safety training, safety posters, decontamination supplies, emergency assistance, and restricted field entry. For all pesticide use, it is a violation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to use a registered pesticide in a manner inconsistent with its labeling. OSHA has no authority to issue any citations related to pesticide exposures, pursuant to Section 4(b)(1) of the OSH Act. In the event that the Compliance Officer encounters any cases of pesticide exposure or the lack of an appropriate pesticide label on containers, a referral should be made to the local EPA office or state agency administering pesticide laws.

If postharvest activities/operations are being conducted at the site (see Section C, Jurisdiction) an inspection of these operations may be conducted at the discretion of the Area Director in accordance with the Region V LEP for Grain Handling Facilities, CPL 04-00 (LEP17)

C. **Inspection type:** Inspections conducted under this LEP are comprehensive safety inspections, unless a Compliance Officer on site sees a potential health hazard. If both a safety and health inspection are conducted, such inspections may be conducted as either a combined safety/health inspection by a cross-trained Compliance Officer, or as separate safety and health inspections, or as joint safety and health inspections. If a health inspection is conducted in any of these circumstances, the inspection would be counted as a health inspection. Unprogrammed activities (i.e. Accidents, Complaints, Referrals, Fatalities/Catastrophes) regarding covered dairy farm operations shall be expanded to include the procedures in this LEP.

D. **Citations:** Safety and health hazard exposures not covered under 29 CFR 1928 would be evaluated under Section 5(a)(1) of the Occupational Safety and Health Act of 1970 (OSH Act of 1970) that provides the "Each Employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees".

E. **Document review:** Programmatic review is to include the OSHA 300 Injury and Illness Logs for the current and previous three years, the corresponding OSHA 300-A Summary Forms, as well as any and all employer provided safety and health programs or training.

F. **Compliance Officer Protection:**

1. Prior to conducting the inspection, the Area Director shall ensure the Compliance Officer has the necessary safety and health expertise to evaluate safety and health hazards which they may potentially be exposed to during their inspections. A Field Hazard Bulletin (FHB) has been developed by the Eau Claire Area Office - Evaluating Dairy Farm Operations LEP Inspection Hazards.

2. The Area Director will also ensure the Compliance Officer has the necessary PPE to conduct the inspection, including but not limited: hard hat, safety glasses, hearing protection, safety boots, and respiratory protection.

3. Prior to initiating the walk around, the Compliance Officer will ask the employer about any unusual hazards or special circumstances that would require specific personal protective equipment (PPE) beyond that addressed in the FHB.

4. The Compliance Officer will not place themselves in potentially hazardous situations such as entry to a permit-required confined space (PRCS) or activities which would require the performance of hazardous energy control (lockout). In such cases, necessary information should be sought in other manners including private employee interviews, witness statements, engineering drawings, manufacturing specifications/manuals, etc.

5. The Compliance Officer will conduct self sampling when they are potentially exposed to toxic chemicals or excessive noise. Toxic chemicals encountered could include, but are not limited to: particulates not otherwise classified (PNOC), formaldehyde, ammonia, methane, carbon dioxide, hydrogen sulfide, herbicides, and pesticides.

G. **Dairy Farm biosecurity considerations:** Compliance Officers will be trained in the standard biosecurity requirements for the dairy farm industry during the initial

rollout of the LEP. This will be led by the Syracuse Area Office and will involve input from stakeholders involved in various outreach efforts. Compliance Officers will be supplied rubber safety toe knee boots, a plastic bucket, a scrub brush, and a liquid sanitizing solution (household all purpose cleaner, liquid chlorinated solution, etc).

Compliance Officers will coordinate with each establishment on the necessary bio-security measures to be taken regarding herd health. Prior to any walkaround activities, the Compliance Officers will ask the employer to fill their bucket with water, add the appropriate amount of sanitizing solution, don their boots and wash them thoroughly. Upon departing the site, the Compliance Officers will wash their boots thoroughly in a similar manner before doffing them.

H. **Language barrier resources:** As approximately 27% of all New York hired dairy farm laborers are immigrant workers, it is appropriate that each New York Area Office coordinate with Region II Enforcement Programs for resources relating to Spanish speaking Compliance Officers, if needed. Effective private employee interviews are essential to the success of inspections conducted under this LEP for purposes such as but not limited to OSHA coverage, covered employee activities/operations, violation documentation, explanation of on-site activities, etc.

I. **Citations:** Violations will be cited according to the FOM, Section 5(a)(1) of the 1970 OSH Act, and relevant OSHA standards; such as 29 CFR 1928, except 1928.110 (Field Sanitation) and 1910.142 (Temporary Labor Camps), which are enforced by the Wage and Hour Division of the US Department of Labor under Secretary of Labor Order 6-96.

X. **Outreach:**

Region II will develop an outreach plan which will implement programs that will support the efforts of the Agency in meeting the Strategic Plan/Operating Plan goals. Such programs could include speeches, training sessions, or news releases to our constituents such as unions, professional organizations, and community groups.
Inspections may be initiated independent of any outreach being conducted.

XI. **Recording and Tracking in OIS**: Current instructions for completing the appropriate OSHA forms shall be applied when recording inspections under this LEP.

A. For any programmed inspection under this LEP, under the Inspection Type tab, in the Inspection Types Field, the initiating type will be marked as "programmed planned" and in the Inspection Emphasis Programs Field under Local Emphasis Program select "DairyFarm"

B. For any unprogrammed inspection under this LEP (i.e. Accidents, Complaints, Referrals, Fatalities/Catastrophes), under the Inspection Type tab, in the Inspection Types Field, the initiating type will be marked as "unprogrammed planned" and in the Inspection Emphasis Programs Field under Local Emphasis Program select "DairyFarm"

C. If the Compliance Officer finds that the farm has employed 10 or fewer employees (not counting immediate family members) at the time of the inspection and at all times during the last 12 months and there is no evidence of an active temporary labor camp during the preceding 12 months, the Manage Inspection section of OIS shall be coded as "No Inspection".

XII. **Program Evaluation:**

A. Abatement documentation/verification will be submitted to or otherwise collected by the Area Office for all violations. The abatement information must be included in the case file in a timely manner.

B. Each Region II Office participating in the LEP will prepare a written evaluation of this LEP in the format specified by OSHA Instruction CPL 04-00-001.The evaluation must respond to the questions outlined in Appendix A of the Instruction. Evaluations will be submitted to FEO no later than September 15, 2014. The evaluation will include a recommendation for the continuation or elimination of this program. In addition, the evaluation will include the following evaluation factors:

1. The goal of the program and the Area Office's opinion of how effective the program was in meeting its goals.

2. Data and information used to support the conclusions stated above such as enforcement statistics, serious hazards eliminated, any impact on covered, non-inspected employers, and the number of employees affected by enforcement activities covered by the LEP. Data to be evaluated may also include:

a. Number and percentage of serious, repeat, 5(a)(1) and willful violations cited
b. Number and type of violations issued directly related to hazards targeted by the LEP
c. Number of fatality inspections

d. Number of visits coded as "No Inspection"
e. Number and type of referrals made to other agencies
f. Number of outreach activities conducted
g. Number of employers contacted through outreach
h. Number of individuals affected through outreach