OSHA REGIONAL NOTICE

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

DIRECTIVE NUMBER: CPL 04-00 (LEP 009) EFFECTIVE DATE: October 1, 2014

SUBJECT: Local Emphasis Program for Dairy Farm Operations
REGIONAL IDENTIFIER: Region V

ABSTRACT

Purpose: This Notice continues 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 Limitation under the Appropriations Act

D) CPL 02-00-025, 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) OSHA Field Hazard Bulletin, Evaluating Dairy Farm Operations LEP Inspection Hazards – Eau Claire Area OSHA Office

H) Wisconsin Milk Marketing Board

I) University of Wisconsin Research

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

Action Offices:	Wisconsin Area Offices – Region V
Originating Office:	Eau Claire Area Office
Contact:	U. S. Department of Labor – OSHA Assistant Regional Administrator – Enforcement Programs 230 South Dearborn Street, Room 3244 Chicago, IL 60604

By and Under the Authority of

For Nick A. Walters
Regional Administrator

TABLE OF CONTENTS

Abstract		Cover Page
Table of Contents		3
I.	Purpose	4
II.	Scope	4
III.	Expiration	4
IV.	References	4
V.	Definitions	5
VI.	Background	6
	A. History	6
	B. Hazards	7
	C. Jurisdiction	15
VII.	Action	16
VIII.	Program Procedures	16
IX.	Inspection Procedures	17
X.	Recording and Tracking	21
XI.	Program Evaluation	21
XII.	Outreach Activities	22

I. **Purpose.** The purpose of this Notice is to continue 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 112120, in accordance with the provisions of OSHA Instruction Number CPL 04-00-001, Procedures for Approval of Local Emphasis Programs (LEPs).

Note: Unprogrammed activities (i.e., accidents, complaints, referrals, fatalities/catastrophes) conducted in dairy heifer replacement production facilities categorized under NAICS code 112111 should be inspected in accordance with the guidance in this LEP and should be coded concurrent with Section X of this document. Dairy heifer replacement production facilities are not being programmed for inspections under the scope of this LEP.

II. **Scope.** The Notice applies to the jurisdictional area of all Federal Area Offices of the Occupational Safety and Health Administration in the State of Wisconsin. 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]Wisconsin Milk Marketing Board website www.wmmb.com; Wisconsin Dairy Statistics (5/4/11) utilizing USDA/NASS (U.S. Department of Agriculture/National Agricultural Statistics Service) Milk Production data

I. [2]University of Wisconsin Madison / University of Wisconsin Cooperative Extension Program on Agricultural Technology Studies (PATS) [Harrison et al]: Changing Hands: Hired Labor on Wisconsin Dairy Farms February 2009 – *Briefing no.1 Overview of Immigrant Workers On Wisconsin Dairy Farms* http://www.pats.wisc.edu/projects/2

J. 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 60 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 or condition of employment.

VI. Background.

A. History:

The dairy cattle and milk production industry in Wisconsin has experienced drastic changes over the last several decades. The number of dairy farms in Wisconsin has steadily decreased from approximately 60,000 in 1970 to approximately 15,000 in 2007 (75% reduction)[1,2]. Along with the 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 18 billion pounds in 1970 to approximately 24 billion pounds in 2007 (33% 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[2].

The University of Wisconsin – Madison / University of Wisconsin – Cooperative Extension Program on Agricultural Technology Studies (PATS) conservatively estimated that the total number of hired workers approached 13,000 based on a dairy farm worker survey conducted in 2008[2]. As a result of this survey, PATS was able to report the following information relating herd size to the reliance on hired labor:

Summary of Percentage of Farms Reporting Hired Labor by Herd Size	
Herd Size (number of cows)	Percentage of Farms Reporting Hired Labor
0-49	5
50-99	14
100-199	42
200-499	90
>500	100
Source: University of Wisconsin Madison / University of Wisconsin Cooperative Extension Program on Agricultural Technology Studies (PATS) [Harrison et al]: Changing Hands: Hired Labor on Wisconsin Dairy Farms February 2009 – Briefing no.1 Overview of Immigrant Workers On Wisconsin Dairy Farms[2]	

The PATS survey acknowledged that the farm size and productivity trends in the dairy industry have led to an increase in hiring workers on existing farms. A majority of the hired farm workers in the dairy industry within Wisconsin are immigrant workers, accounting for more than 40 percent of all hired dairy employees[2]. The PATS survey revealed that the trend of hiring immigrant workers on dairy farms in Wisconsin generally began around 2000. This survey indicated that two trends occurring within the dairy farm industry have necessitated the need for hiring more workers. Those trends were noted as: larger herd sizes and/or shifts to more aggressive milking schedules requiring employees to work long, non-standard shifts including weekends; the decreasing size of farm families; the expansion of farm family members into careers not related to farming; and the increase in the average age of the dairy farmer[2].

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 June of 2006, Wisconsin Area OSHA Offices have conducted at least six fatality inspections at several establishments where OSHA was made aware of the fatality event and jurisdiction was established. These inspections are:

Inspection #308385368 – 6/28/06, A 32 year old employee was pinned between a skid steer loader bucket and the ground after being ejected from the bucket. A serious citation was issued under 1928.51(d) as a result of the inspection activity.

Inspection #309837060 – 1/10/07, A self-employed HVAC contractor fell from a mezzanine level 15 feet to ground level as a result of an unsecured railing system. Serious citations issued as a result of the inspection activity included: a Section 5(a)(1) general duty clause violation and 1928.57(c)(2)(i).

Inspection #313176083 – 10/26/09, A 31 year old employee drowned inside a skid-steer loader that was driven off an unguarded manure push-off platform into an outdoor earthen manure storage (lagoon). Serious citations issued as a result of the inspection activity included: multiple Section 5(a)(1) general duty clause violations and 1910.1200(e)(1), (g)(1) and (h)(1) through 1928.21(a)(5).

Inspection #313179186 – 11/28/10, A 17 year old employee was crushed against a gate in an animal crowding area while herding cows into a milking parlor. Serious citations issued as a result of the inspection activity included: a Section 5(a)(1) general duty clause violation and 1910.1200(e)(1), (g)(1) and (h)(1) through 1928.21(a)(5).

Inspection #315120931 – 2/25/11, A 23 year old employee was trampled by a bull while herding cows into a milking parlor. A serious citation was issued under a Section 5(a)(1) general duty clause violation as a result of the inspection activity.

Inspection #190335 – 1/30/12, A 52 year old employee was fatally trampled while working amongst 50 -70 dairy cattle being herded towards a fenced lane that funneled the cattle to a barn. Serious citations issued as a result of the inspection activity included: a Section 5(a)(1) general duty clause violation and 1910.1200(e)(1) through 1928.21(a)(5).

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, 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 the following common hazardous 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

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

   Division of Cooperative Extension of the University of Wisconsin-Extension: "Safety Considerations for Manure Handling, A3675"

   The University of Maine Cooperative Extension, Maine Farm Safety Program: "Barn and Manure Storage Safety, Bulletin 2304"

   Texas Cooperative Extension, The Texas A&M University System: "Manure Pit Safety"

   Iowa State University Extension: "Manure Storage Poses Invisible Risks, Pm-1518k (1993)"

   National Institute for Occupational Safety and Health (NIOSH): "NIOSH ALERT on Manure Pits, DHHS (NIOSH) 90-103"

2. Animal Handling / Worker Positioning / Needlestick Prevention:

   Fatal or serious crushed-by hazards may exist where employees interact with dairy bulls and cows without appropriate training on appropriate animal handling techniques, especially 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. Serious contact hazards may also exist where animals are handled for the purposes of medical procedures and artificial insemination and are not properly restrained.

   Potentially serious needlestick hazards may exist where farm workers or veterinarians utilize needles to administer medications (vaccinations, sedatives, etc.) to animals that are not properly restrained. Common injuries may include skin infections, tissue wounds, and allergic reactions. Although less common, the potential for serious side effects from vaccinations and sedatives exists.

   Guidance Documents:

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

   Upper Midwest Agricultural Safety and Health Center's (UMASH) fact sheets: "Needlestick Prevention for Producers and Veterinarians" and "Needlestick Prevention on the Farm"

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 steer 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, and/or 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 and training materials

   OSHA Safety and Health Information Bulletin (SHIB): "Hazards Associated with Operating Skid-Steer Loaders with Bypassed and/or Improperly Maintained Safety Devices, SHIB 01-12-2009"

   National Institute for Occupational Safety and Health (NIOSH): "NIOSH ALERT on Preventing Injuries and Deaths from Skid-Steer Loaders, DHHS (NIOSH) 98-117"

   Division of Cooperative Extension of the University of Wisconsin-Extension: "Safe Use of Skid-Steer Loaders on the Farm, A3674"

   Kansas State University Research and Extension: "Skid Steer Loader Safety for the Landscaping and Horticultural Services Industry"

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)

   29 CFR 1928.51(b)(2)

29 CFR 1928.51(d)

Guidance Documents:

The Association of Equipment Manufacturers (AEM) Safety - Manual for Operating and Maintenance Personnel, Agricultural Tractor (2005)

Iowa State University Extension: "Employers' Instructional Guide, Training Employees Who Operate Agricultural Tractors, Pm-632 (r2000)"

University of Missouri Extension: "Safety Tractor Operation (2002)"

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

Fatal or serious entanglement and/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) through (iii)

Regulatory information for farmstead equipment:

29 CFR 1928.57(c)(1)(i) and (ii)

7. Guarding of Other Power Transmission and Functional Components:

Fatal or serious entanglement and/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) through (iii)

29 CFR 1928.57(b)(3)

29 CFR 1928.57(b)(4)(i) and (ii)

Regulatory information for farmstead equipment:

29 CFR 1928.57(c)(2)(i) and (ii)

29 CFR 1928.57(c)(3)(i) through (iii)

29 CFR 1928.57(c)(4)(ii)

8. Hazardous Energy Control While Performing Servicing and Maintenance on Equipment:

   Fatal or serious crushed-by, struck-by, caught in-between, entanglement, and/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)

   Guidance documents:

   Manufacturer's tractor operator manual and instructions

   The Association of Equipment Manufacturers (AEM) Safety - Manual for Operating and Maintenance Personnel, Agricultural Tractor (2005)

   Additional regulatory information for farmstead equipment:

   29 CFR 1928.57(c)(5)(i)

   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 (2005)

9. Hazard Communication:

   Serious chemical ingestion, absorption, splash, fire, injection and/or other hazards may exist where hazardous chemicals such as teat dips, hoof care products, medications, sanitization products, etc. are stored, dispensed, and used without

appropriate training and information, including the availability of Safety Data Sheets (SDSs).

Regulatory information:

1928.21(a)(5) Hazard Communication – 1910.1200

Guidance documents:

OSHA's Hazard Communication web page:
http://www.osha.gov/dsg/hazcom/index.html

Upper Midwest Agricultural Safety and Health Center's (UMASH) fact sheets: "Needlestick Prevention for Producers and Veterinarians" and "Needlestick Prevention on the Farm"

10. Confined Spaces:

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

Guidance documents:

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

OSHA Fact Sheet "Worker Entry into Grain Storage Bins"

11. Horizontal Bunker Silos:

Serious or fatal engulfment and/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:

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

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 #0112: "2013 TLVs and BEIs (2013)"

*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 operations (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 10 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) 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 or 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 regulation 29 CFR 1975.4(b)(2) states that members of the immediate family of the farm employer are not regarded as 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.

An exempt small farm (10 or fewer non-family employees and does not maintain a temporary labor camp) is not subject to OSHA enforcement simply because it uses and stores its own grain on the farm or sells that grain from the farm. Onsite storage or sale of grain grown on the farm constitutes a "related activity" under the definition of a "farming operation" because it is necessary to gain economic value from grain grown on the farm. On the other hand, if an exempt small farm maintains a grain handling operation sorting and selling grain grown on other farms, the grain handling operation would not be exempt from OSHA enforcement under the appropriations rider.

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.

VII. **Action.** The Appleton, Eau Claire, and Madison, Wisconsin OSHA Area Offices shall use the LEP described herein as the basis for scheduling programmed inspections to reduce occupational hazard exposure in the dairy farming industry. The Milwaukee, Wisconsin OSHA Area Office shall use the LEP described herein for conducting unprogrammed activities (i.e., accidents, complaints, referrals and fatalities/catastrophes).

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 two listings of employer establishments in the following SIC/NAICS:

1987 SIC	1987 SIC Industry Title	2012 NAICS Code
0241	Dairy Farms	112120

Establishment sources are:

List #1 - WI Department of Agriculture, Trade and Consumer Protection (DATCP) licensed milk producers listing – approximately 13,000 Grade A and B milk producers in Wisconsin http://datcp.wi.gov/Programs/Food_Safety/index.aspx

List #2 - WI Concentrated Animal Feeding Operations (CAFO) water protection permit listing - approximately 150 farms with more than 700 dairy cows in Wisconsin http://dnr.wi.gov/runoff/ag/permits.htm

B. The establishment lists will be randomized in accordance with OSHA Instruction CPL 02-00-025, Scheduling System for Programmed Inspections. Each OSHA Area Office will sort List #1 by city/zip codes within their jurisdiction prior to randomization. List #2 will be sorted by county and animal type-dairy prior to randomization.

C. A cycle size of four establishments will be used. Once a cycle is begun, it must be finished. One establishment will be randomly selected from List #1. Three establishments will be randomly selected from 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 effective date of this LEP.

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 to the worksite from the camp, distance to the worksite 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 VI.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 non-exempt grain handling activities/operations are being conducted at the site (see Section VI.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 that "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 into 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 Eau Claire 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 biosecurity 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 40% of all Wisconsin hired dairy farm laborers are immigrant workers, it is appropriate that each Wisconsin Area Office coordinate with Region V 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 U.S. Department of Labor under Secretary of Labor Order 6-96.

X. Recording and Tracking.

Current instructions for completing the appropriate OSHA forms shall be applied when recording inspections under this LEP.

A. For any programmed inspection conducted under this LEP, the Manage Inspection section of OIS shall be marked as:
   1. "Program Planned"
   2. LEP coding marked as DAIRYFARM

B. For any unprogrammed inspections conducted under this LEP (i.e., accidents, complaints, referrals, fatalities/catastrophes), the Manage Inspection section of OIS shall be marked as:
   1. "Unprogrammed"
   2. LEP coding marked as 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."

XI. 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. The Eau Claire Area Office will prepare a written evaluation of this LEP in the format specified by OSHA Instruction CPL 04-00-001. Evaluations will be submitted annually for the previous Fiscal Year. The evaluation will include a recommendation for the continuation or elimination of this program. In addition, the evaluation will include the following evaluation factors based on data supplied by the Wisconsin Area Offices to the Eau Claire Area Office at the end of the Fiscal Year:

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 can include 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 will include:

a. Number of sites inspected

b. Number of employees covered by the inspections

c. Number and percentage of serious, repeat and willful violations cited

d. Number and percentage of Section 5(a)(1) violations cited

e. Number and type of 29 CFR 1928 violations issued

f. Number and type of Section 5(a)(1) violations issued and/or submitted for review

g. Number of fatality inspections

h. Number of in-compliance inspections

i. Number of visits coded as "No Inspection"

j. Number and type of referrals made to other agencies

k. Number of outreach activities conducted

l. Number of employers contacted through outreach

m. Number of individuals affected through outreach

3. Statement and rationale of whether the program should be continued.

4. Description of any legal issues that arose which would necessitate a review by the Solicitor before renewal of the program.

5. Any other comments or recommendations, including findings, which might have an impact on how the industry conducts business.

XII. **Outreach Activities.**

This LEP and the hazards associated with dairy farm operations will be discussed during

all outreach activities including, but not limited to, OSHA speeches, training sessions and Area Office newsletters.

Significant outreach activities and relationships have already been established with organizations such as, but not limited to: Professional Dairy Producers of Wisconsin (PDPW), Wisconsin Dairy Business Association (WIDBA), American Farm Bureau Federation (AFBF), University of Wisconsin Extension (UW-Extension), University of Wisconsin Agricultural Research Station – Arlington, University of Wisconsin River Falls (UWRF) Center for Dairy Farm Safety, Chippewa Valley Technical College (CVTC), Wisconsin Indianhead Technical College (WITC), Northeast WI Technical College (NWTC), Cooperative Resources International (CRI), Hoard's Dairyman Publication, Family Insurance Center, Rural Mutual Insurance Company, Rural Health Initiative, Hastings Mutual Insurance Company, Wisconsin Public Radio (WPR), Dairy Herd Network, Wisconsin Farm Bureau Federation, Wisconsin Ag Connection, Agri-View, National Farm Medicine, Legal Action of Wisconsin, Puentes/Bridges, Mexican Consulate-Chicago, Wisconsin Department of Workforce Development (DWD), and various dairy farms.