PRO-DAIRY e-Alert:
Letter from OSHA about the NY Dairy Local Emphasis Program

Congressman Richard Hanna received a letter from David Michaels, Assistant Secretary, Department of Labor, Occupational Health and Safety (OSHA), that responds to concerns about implementation of the New York Dairy Local Emphasis Program (LEP) and defines temporary farm workers and labor camps in regards to the LEP.

LEP will begin as scheduled in July 2014 on farms with 11 or more employees.

Text of the letter is below:

“We greatly appreciate that the dairy farming community is being proactive in taking the necessary actions in protecting their workers from safety and health hazards. LEP was initially scheduled to take effect in October 2013, and OSHA delayed the start date to July 2014 in response to concerns raised by dairy farmers and their representatives. In addition, OSHA Region II has provided extensive outreach and assistance to dairy farmers for the past nine months and plans to continue to do so in the coming months. And, OSHA notes that the LEP does not impose any new obligations on dairy farmers, but rather sets forth an initiative to ensure compliance with existing standards. OSHA has therefore decided not to further delay the start date and will begin inspections under the LEP in July 2014.

Your second request was for specific language defining what a “temporary farm worker” is for determining if a farm is subject to OSHA inspection. However, when evaluating whether a small farm is subject to OSHA inspection, OSHA is not concerned with whether the farm employs “temporary farm workers,” but rather with whether the farm maintains a “temporary labor camp.” As you know, since the 1970s, an appropriation rider precludes OSHA from expending appropriated funds to conduct enforcement activities on any farming operation with ten or fewer employees that does not maintain a temporary labor camp. As a preliminary matter, OSHA has decided to limit the scope of the LEP to dairy farms with eleven or more employees, so the definition of temporary labor camp is no longer relevant to the LEP.
Outside the context of the LEP, OSHA may inspect farms with ten or fewer employees that maintain a temporary labor camp. To be considered a temporary labor camp, housing maintained by a farm must be provided: (1) as a required condition of employment; and (2) for a discrete, temporary period of time (i.e., for seasonal or temporary employment). Whether housing is a temporary labor camp depends on the required length of stay in the housing. You noted in your letter that dairy farms make permanent offers of employment to their employees, and that housing may be required as a condition of a permanent position on the farm. Housing provided on a permanent basis as a required condition of permanent employment would not be considered a temporary labor camp for purposes of the appropriations rider. Housing provided on a temporary basis as a required condition of employment would be considered a temporary labor camp.”