



March 18, 2009



## **Comments submitted by the Forest Resources Association and Maine Forest Products Council on:**

### **Temporary Employment of H-2A Aliens in the United States ACTION: Notice of proposed suspension of rule.**

US DEPARTMENT OF LABOR - Employment and Training Administration - Wage and  
Hour Division Regulatory Information Number (RIN) 1205-AB55  
Published in Federal Register / Vol. 74, No. 50 / Tuesday, March 17, 2009

The Forest Resources Association and the Maine Forest Products Council strongly oppose the proposed suspension of the H-2A rule and request that you leave the logging provisions of the existing rule in effect.

The Forest Resources Association and the Maine Forest Products Council represent forest products industry members in Maine and the Northeast. Our members include forest landowners, land managers, logging contractors and wood using mills. These comments are submitted on behalf of the members listed at the end of this document.

For many generations, Maine's forest products industry has had a significant reliance on seasonal nonimmigrant Canadian labor in the harvesting and transport of forest products from remote areas of Maine to consuming mills in the region. These workers are the only qualified source of labor available in most of these remote areas. Currently 25-30% of the wood harvested in Maine is produced by Canadian workers. The availability of this labor source is critical to Maine's forest industry which has a direct annual economic contribution of \$7 billion to the region's economy and sustains thousands of jobs in manufacturing and related businesses.

In April, 2008, we submitted comments in support of the proposed addition of logging to the H2A program. Constant uncertainty and increasing restrictions related to the H2B program, which logging employers formerly used, have made that an unworkable option and jeopardized the economic vitality of our businesses that rely on seasonal nonimmigrant labor. As an example, in the summer 2008 harvest season, over 600 Canadian loggers were denied re-entry into the US, due to the failure of Congress to extend the exemption on the cap for returning H2B workers. The resulting artificial shortage of raw material created a supply crisis and drove costs to unsustainable levels for our manufacturing facilities.

The sudden suspension of the H2A rule changes will leave our industry with no alternative source of labor for the upcoming harvest season. The prior H2A rule does not include logging. It is too late to utilize the H2B program. This will create economic havoc with the forest products industry in the region, which is already reeling from the economic downturn, further impacting the entire economy in this region.



Currently 57 companies have applied for approximately 600 Canadian workers through the H2A program for the upcoming summer 2009 harvest season, expecting to start up on approximately June 1. This labor source represents 25-30% of Maine's annual timber harvest.

Employers and their agents have already invested tens of thousands of dollars in the H2A application process for 2009, through fees, acquiring required application software, etc. with the expectation that workers would be available if they complied with program requirements.

***Specific Comments on the Rule Suspension notice and excerpts from the Federal Register / Vol. 74, No. 50 / Tuesday, March 17, 2009***

*The department's proposed action is open for public comment for 10 days...."Because many stakeholders have raised concerns about the H-2A regulations, this proposed suspension is the prudent and responsible action to take,"*

- We participated in good faith in the 2008 comment period. That process was the opportunity for stakeholders to raise concerns. It is unacceptable to overturn that rulemaking process with a short 10 day comment period. Our members will have no alternative source of labor for the upcoming summer harvest season beginning about June 1, as neither H2A nor H2B workers will be available to us.

*A suspension would provide the Department with an opportunity to review and reconsider the new requirements in light of issues that have arisen since the publication of the H-2A Final Rule, while minimizing the disruption to the Department, State Workforce Agencies (SWAs), employers, and workers.*

- The proposed suspension will devastate, not "disrupt" the wood fiber supply situation on the northeast at a time when many wood using mills are struggling to stay operating and keep workers in the mills and related businesses employed.

*To avoid the regulatory vacuum that would result from a suspension, the Department proposes to reinstate on an interim basis the rules that were in place on January 16, 2009.*

- The previous H2A program excluded logging. Reinstating those rules will eliminate the use of the H2A program for logging labor. The window to use the H2B program for this season is now closed. We will have no source of Canadian labor available.



*Please provide written comments only on whether the Department should suspend the December 18, 2008 final rule for further review and consideration of the issues that have arisen since the final rule's publication.*

- These after-the-fact "issues" appear to be focused on farm worker issues. The Canadian logging labor force has been continually caught in the nightmare of immigration debate under H2B and now the H2A program for the past 5 years. These workers and the economy that relies on them should not be held hostage by the broader immigration debate in this country.

*On January 15, 2009, Judge Ricardo M. Urbina denied the plaintiffs' request for a temporary restraining order and preliminary injunction on the basis that the plaintiffs failed to show "likely, imminent and irreparable harm";*

- Given the judges finding, we see no reason for the rules to be suspended

*As we move forward with implementing the Final Rule, however, it is rapidly becoming evident that the Department and the SWAs may lack sufficient resources to effectively and efficiently implement the H-2A Final Rule.*

- This is inexcusable. In December, 2008 USDOL held two Stakeholder Briefing Sessions and training for DOL employees. The Department needs to allocate adequate resources for our economy to utilize this program. If the rule is suspended, many of our members will have NO resources with which to conduct their business.

*Suspending the new H-2A Final Rule and reinstating the prior rule on an interim basis will allow this examination to occur while maintaining the previous status quo.*

- Suspending the rule leaves our members with no alternative. Logging was not included in the prior rule. H2B is not an option for us now and was dysfunctional and unreliable when we tried to utilize that program.

*In addition, DOL has increasing evidence that undertaking regulatory program applicable to the temporary employment of nonimmigrant workers in agricultural occupations before additional examination of the relevant legal and economic concerns is proving unnecessarily disruptive and confusing to the Department's administration of the H-2A program, SWAs, agricultural employers, and domestic and foreign workers. It is particularly important to avoid such disruption, if possible, in light of the severe economic conditions the country is now facing.*

- Suspending the rule will cause more disruption to the economy, not less.



*...the Department may wish to reconsider these policy positions in light of the rising unemployment among U.S. workers and their availability for these jobs, and continuing economic problems in this country.*

- The H2A program requires a 45 day advertisement and recruitment period for qualified American workers. Implementation will not restrict that.

*Growers require clear and consistent guidance on the rules governing the processing of their applications so that they can plan and staff their operations appropriately for the impending growing season.*

- We agree. That is why we strongly oppose the proposed suspension of the H-2A rule and request that you leave the logging provisions of the existing rule in effect.

Sincerely,

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Representing the following members:

American Forest Management  
Baskahegan Land Co.  
Blanchette Lumber Co.  
Domtar  
Fontaine Lumber Co.  
Huber Resources  
Irving Woodlands  
Jean Guy Allen  
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