



Jared Golden
Congress of the United States
2nd District of Maine

July 21, 2020

Brian Pasternak
Director of Program Services
Office of Foreign Labor Certification
U.S. Department of Labor
202 Constitution Ave NW
Washington, DC 20210

Dear Director Pasternak:

I am writing on behalf of Maine loggers, truck drivers, and their families to urge you to investigate allegations of misuse of the H-2A visa program by Canadian truck drivers. If true, a lack of clarity and enforcement by the U.S. Department of Labor (DOL) may be incentivizing the violation of cabotage rules along the U.S.-Canadian border, with Canadian truck drivers engaging in what could be considered illegal point-to-point transportation in Maine. Such unlawful movement of goods within the United States by foreign workers would not only be a violation of our immigration laws, but also take away good jobs from American workers.

The importance of the logging industry in rural Maine cannot be overstated. In some areas of the state, it is the primary source of employment. As an important regional trading partner, Canadians have always had a presence in this industry. However, a number of stakeholders in northern Maine have raised concerns with federal officials about the increasing presence of Canadian truck drivers who appear to be flouting the rules designed to protect American workers and are troubled that federal agencies seem to be turning a blind eye and allowing them to do so.

As you know, cabotage rules agreed to between Mexico, Canada, and the United States allow each country's drivers to participate in the international stream of commerce but not another country's domestic market. According to the Department of Homeland Security's (DHS) guidance on compliance with cross-border traffic, this international agreement allows Canadian truck drivers in possession of B-1 temporary worker visas to drop off international shipments in the U.S. and to pick up a load to return to Canada. However, upon delivering the initial load from Canada, these drivers are not allowed to then pick up another load in the U.S. and deliver it elsewhere within the U.S.

While it is clear in immigration law and through DHS guidance that B-1 visa holders must abide by cabotage rules, these rules are silent as they relate to the H2-A visa program. Consequently, as loggers in northern Maine have alleged -- with supporting documentation -- it appears that Canadian truck drivers are using H-2A visas in order to circumvent cabotage rules and conduct point-to-point deliveries in Maine.

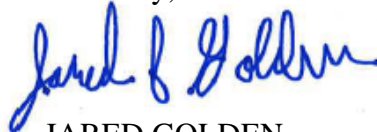
Troy Jackson, President of the Maine State Senate, has already provided you with documentation of Canadian truck drivers with H-2A visas violating cabotage rules. I have enclosed Senator Jackson's letter and supporting documentation, and I echo his concerns about the lack of clarity from the federal government regarding why it appears that Canadian truck drivers are allowed to skirt the rules to displace Maine workers in this manner. This wrong cannot go unaddressed and is an opportunity for your agency to come to the defense of the American worker. That is why I request your response to the below questions in the hopes that you take action to clarify the H-2A program's rules and to investigate whether or not Canadian truck drivers are inappropriately taking advantage of the H-2A visa program.

1. Is it your understanding that recipients of H2-A visas are permitted to engage in the point-to-point transportation of goods in the U.S.? If not, how does DOL ensure that recipients of H2-A visas do not then violate cabotage laws?
2. Is there coordination between your agency and Immigration and Customs Enforcement and Customs and Border Patrol to ensure that Canadian nationals are not using the H2-A program to circumvent cabotage laws?
3. Has DOL taken any enforcement actions over the past 10 years against recipients of H2-A visas who have violated U.S. cabotage laws?
4. In 2008 and again in 2010, the U.S. Department of Labor released a rule that included "logging" as part of its definition of "agricultural labor or services" under which foreign workers could apply for the H2-A program. Given that trees are not a crop in danger of spoiling if not harvested within a narrow window of time, how did the Department reach this decision?

Based upon your understanding of any contradictions existing in current law, I stand ready to introduce legislation to clarify that the program should not be used to circumvent cabotage law and to demand enforcement actions to protect American logging jobs. If necessary, I will also push for congressional hearings to investigate the negative impact that the misuse of the H-2A program has on American workers. Make no mistake, the Canadian government is not enabling American truck drivers to operate like this on their side of the border.

I appreciate your attention to this important matter, and I look forward to your response.

Sincerely,



JARED GOLDEN
Member of Congress