

**U.S. Department of Labor**

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**Issue Date: 06 January 2016**

BALCA Case No.: 2016-TLC-00009  
ETA Case No.: H-300-15320-676538

*In the Matter of:*

**GRADE A CRAWFISH,**  
*Employer.*

Certifying Officer: Charlene G. Giles  
Chicago National Processing Center

Appearances: Jared Allen  
Grade A Crawfish  
*For the Employer*

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U.S. Department of Labor  
Washington, D.C.  
*For the Certifying Officer*

Before: LEE J. ROMERO, JR.  
Administrative Law Judge

**DECISION AND ORDER AFFIRMING CERTIFYING OFFICER'S  
DENIAL OF TEMPORARY LABOR CERTIFICATION**

This matter arises under the temporary agricultural guest worker provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184, and 1188, and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart B (collectively, H-2A program). It is before the undersigned on Grade A Crawfish's ("Employer") request for an expedited administrative review pursuant to 20 C.F.R. § 655.171. For reasons stated below, the undersigned **AFFIRMS** the determination of the Certifying Officer to deny the application for temporary labor certification.

## STATEMENT OF THE CASE

### **I. Procedural History, Contentions of the Parties, & Jurisdiction**

Employers who seek to bring foreign agricultural workers into the United States under the H-2A program must apply to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. § 1188(a).<sup>1</sup>

The implementing regulations at 20 C.F.R. Part 655, Subpart B, set forth a multi-step process by which this certification—known as a “temporary labor certification”—may be applied for and granted or denied. First, the petitioning employer must file a job order with the State Workforce Agency (“SWA”) serving the area of intended employment. 20 C.F.R. § 655.121. The SWA will review the job order for compliance with the regulations and, if it finds the job order acceptable, post the job order on its intrastate clearance system and begin the recruitment. 20 C.F.R. § 655.121(b), (c). If the SWA does not locate able, willing, and qualified workers to fill the positions for which the employer seeks certification, the employer may file an *Application for Temporary Employment Certification* (ETA Form 9142A) with the U.S. Department of Labor (“DOL”), Employment and Training Administration (“ETA”), Office of Foreign Labor Certification (“OFLC”). A Certifying Officer (CO) in the OFLC will review the application for compliance with the requirements set forth in the regulations. 20 C.F.R. § 655.140. If the application is incomplete, contains errors or inaccuracies, or does not meet the requirements set forth in the regulations, the Certifying Officer will notify the employer within seven calendar days. 20 C.F.R. § 655.141(a).

On or around December 1, 2015, Employer filed an *Application for Temporary Employment Certification* (ETA Form 9142A) with ETA’s Chicago National Processing Center (“CNPC”) for the following positions: fishermen, boilers, and “peelers and packers.” The period of intended employment was to begin February 15, 2016 and continue through June 15, 2016. (AF 40-42; 51).<sup>2</sup>

The Certifying Officer issued a Notice of Deficiency on December 7, 2015, which informed Employer that, in accordance with Departmental regulations at 20 C.F.R. § 655.141, the application for temporary employment certification and/or job order failed to meet the necessary criteria for acceptance. (AF 19-20).

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<sup>1</sup> The Secretary of Labor delegated the authority to make this determination to the Assistant Secretary for the Employment and Training Administration, who in turn delegated it to the Office of Foreign Labor Certification. 20 C.F.R. § 655.101.

<sup>2</sup> In this decision, citations to the Appeal File will appear as follows: Appeal File: (AF \_\_\_).

The Certifying Officer noted five deficiencies, including the notice that several of Employer's job duties, specifically "boiling, peeling, and packaging of crawfish," did not meet the definition of "agricultural" labor or services under 20 C.F.R. § 655.103(c). The relevant portion of 20 C.F.R. § 655.103(c) provides that "agricultural labor" means all services performed:

In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

20 C.F.R. § 655.103(c)(1)(i)(D).

The Certifying Officer concluded that those jobs which required the "boiling, peeling, and packaging of crawfish" serve to change the agricultural commodity from an unmanufactured state (raw crawfish), to a manufactured state (boiled and peeled crawfish). Thus, the Certifying Officer found those jobs did not fall within the definition of "agricultural labor" as defined by 20 C.F.R. § 655.103(c). (AF 21-23).

Subsequent to the Notice, Employer responded to the Notice of Deficiency and argued that since Employer was "in possession of the ponds from which the crawfish originated and the boiling, peeling and packaging of crawfish do not make them ready for human consumption." According to Employer, "the crawfish are technically still raw" and "the product requires further cooking before it can be eaten." As such, Employer contends that the H-2A classification is appropriate for all of its proposed job positions. On December 18, 2015, the Certifying Officer denied Employer's Application for Temporary Employment Certification. The Certifying Officer indicated that Employer was provided the opportunity to amend its application and Employer failed to do so. The Certifying Officer addressed Employer's arguments and found that 20 C.F.R. § 655.103(d)(1)(i)(D) specifically requires that "the end product must be unmanufactured." The Certifying Officer found Employer's ownership of the ponds to be irrelevant, due to the fact that the job duties "include further processing beyond an unmanufactured agricultural commodity." Moreover, the Certifying Officer noted that "the fact that the processing of the crayfish has not concluded does not mean that the commodity remains in its unmanufactured state." In citing Oxford Dictionaries, the Certifying Officer defined "unmanufactured" as "not manufactured; in a raw or unprocessed state or condition" and found such a definition "precluded the duties in question from being viewed as permissible under the H-2A program." (AF 5-8).

On December 22, 2015, Employer requested administrative review of the Certifying Officer's denial. Employer contested the denial of its application and asserted that its product is raised by Employer in ponds belonging to Employer. Moreover, Employer asserted that the product "requires cooking after it is processed" and is "not edible" when it leaves the facility.

Therefore, Employer argues that the product is “unaltered” when it leaves Employer’s facilities. (AF 2).

On December 28, 2015, the Office of Administrative Law Judges (“OALJ”) received the Appeal File in this case requesting expedited administrative review. On December 29, 2015, the undersigned issued a Notice of Docketing and Order Setting Briefing Schedule. The Office of the Solicitor submitted a brief on the brief due date of January 4, 2016.

The undersigned has jurisdiction pursuant to 20 C.F.R. §§ 655.141(c), 655.171(b)(2). The burden of proof to establish eligibility for a labor certification is on the petitioning employer. 8 U.S.C. § 1361; 20 C.F.R. § 656.2(b). The employer, therefore, must demonstrate that the Certifying Officer’s determination was based on facts that are materially inaccurate, inconsistent, unreliable, or invalid, or based on conclusions that are inconsistent with the underlying established facts and/or legally impermissible. See Catnip Ridge Manure Application, Inc., Case No. 2014-TLC-00078 (May 28, 2014).

When an employer requests an administrative review, the ALJ’s decision may affirm, reverse, or modify the Certifying Officer’s determination, or remand to the Certifying Officer for further action. 20 C.F.R. § 655.171(b)(2). The ALJ’s decision is the final decision of the Secretary. Id. In light of the foregoing standards, the undersigned will discuss the merits of this case below.

### **DISCUSSION**

As previously mentioned, 8 U.S.C. § 1188(a), provides an avenue for employers to bring temporary non-immigrant agricultural workers into the United States to perform work that employers are unable to fill with United States workers. As indicated, this provision applies only to agricultural workers.

The Code of Federal Regulations, 29 C.F.R. § 655.103(c), defines “agricultural labor” as: “agricultural labor as defined and applied in sec. 3121(g) of the Internal Revenue Code of 1986 at 26 U.S.C. § 3121(g); agriculture as defined and applied in sec. 3(f) of the Fair Labor Standards Act of 1938 (FLSA) at 29 U.S.C. § 203(f); the pressing of apples for cider on a farm; or logging employment.” The statutory provisions were incorporated within the Code of Federal Regulations and provide as follows:

Agricultural labor...means all service performed:

- (A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
- (B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging

- timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;
- (C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. § 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;
  - (D) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;
  - (E) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in paragraph (c)(1)(iv) of this section but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;
  - (F) The provisions of paragraphs (c)(1)(iv) and (c)(1)(v) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or
  - (G) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

20 C.F.R. § 655.103(c)(1); 26 U.S.C. § 3121(g).

“Agriculture” as defined by the FLSA means:

farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in 1141j(g) of title 12, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

20 C.F.R. § 655.103(c)(2); 29 U.S.C. § 203(f).

As previously stated, Employer argues that the crawfish boiler, peeler, and packer positions are agricultural in nature, because the product is entirely raised, harvested, and delivered for processing by Employer. Moreover, Employer contends that the product requires cooking after it is processed in employer's plant and thus should be considered "unaltered." I shall discuss the applicability of each definition of agricultural employment in turn. The Certifying Officer argues that the Certifying Officer's determination –that boiling, peeling, and packaging of crawfish is not a form of agricultural labor or services for which an H-2A labor certification may be granted-is consistent with the plain meaning of the regulations and precedent regarding the manufacturing of agricultural commodities and the processing of shellfish and other aquatic products.

As per the Internal Revenue Code, Sec. 3121(g)(4)(a) and the Code of Federal Regulations § 655.103(c), the process of "handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market" of an agricultural or horticultural commodity may be considered "agricultural labor" so long as (1) the agricultural or horticultural commodity is in its unmanufactured state, and (2) the operator produced more than one-half of the commodity.

Unfortunately, the case law interpreting this provision and guidance regarding its interpretation is sparse. In In re Domaine Drouhin Oregon, another ALJ considered the issue with regards to the production of wine. In re Domaine Drouhin Oregon, Case No. 2004-TLC-00008 (ALJ June 7, 2004). In deciding whether the jobs fell within the definition of "agricultural labor," the ALJ recognized that the process of handling and processing the grapes to remove leaves, rocks, and twigs was done with regards to the production of wine. Id. Such steps were "more akin to the wine-making process than the harvesting and storage of the grapes." Id. The ALJ found that the grapes were not being separated from the debris for the purpose of then being "stored or sold as grapes, but rather so that they [could] be further processed into wine." Id. The ALJ found the words "unmanufactured state" made it "even clearer that the tasks at issue here, which [were] preliminary to converting an agricultural product from its 'unmanufactured' state into a 'manufactured' state, such as wine, [did] not come under the definition of agricultural labor." Id.

In the present matter, Employer is correct that the ownership of the ponds from which the crawfish originate is relevant. However, the crux of the issue is not whether Employer produced more than one-half of the commodity, but rather whether the commodity remains in its unmanufactured state. Similar to the production and harvesting of grapes, the production and harvesting of the crawfish, clearly falls within the definition of "agricultural labor." Indeed, even the cleaning and packaging of those crawfish would fall within such a definition. However, once the Employer begins the boiling process, the tasks involve a different nature. The end product is no longer crawfish in its raw and unmanufactured state, but rather boiled and peeled crawfish tails. The process of boiling the crawfish is the transition from an unmanufactured state to a manufactured state. Thus, any tasks involving the "handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage" of the crawfish following the boiling process could not fall within the definition of agricultural labor as per the Code of Federal Regulations. Employer's argument that the crawfish requires additional cooking does not, as the Certifying Officer suggests, mean that the commodity "remains in its

unmanufactured state.” Indeed, once boiled, the crawfish cannot be considered to be “unmanufactured” as contemplated by the regulations nor the prevailing understanding of the word. As noted by the Certifying Officer, Oxford Dictionaries defines unmanufactured as “not manufactured; in a raw or unprocessed state or condition.” Similarly, the term “manufacture” has been defined as “something made from raw materials by hand or by machinery.”<sup>3</sup> As such, the dividing line between manufactured and unmanufactured appears to hinge upon the term “raw.” Thus, the process of boiling the crawfish clearly transforms the product from an unmanufactured to a manufactured state, regardless of whether additional processing is required.

As per the FLSA § 3(f), “agriculture” includes the “production, cultivation, growing, and harvesting of any agricultural or horticultural commodities...performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.” The Code of Federal Regulations explain “production, cultivation, growing, and harvesting,” means “actual raising operations which are normally intended or expected to produce specific agricultural or horticultural commodities.” The Code of Federal Regulations emphasizes that “production” as used in section 3(f) of the FLSA “does not refer to such operations as the grinding and processing of sugar cane, the milling of wheat into flour, or the making of cider from apples.” Such operations constitute the processing of such commodities, not the production of them. 29 C.F.R. § 780.117(a).

The definition of “agriculture” under Section 3(f) of the FLSA has “two distinct branches” one which provides a “primary meaning of agriculture” and a second, “somewhat broader” meaning. 29 C.F.R. § 780.105(a). The primary meaning “includes farming in all its branches.” For example, the primary meaning includes “specific farming operations such as cultivation and tillage of soil, dairying the production, cultivation, growing and harvesting of any agricultural or horticultural commodities.” Moreover, the Regulations clearly provide that “farming in all its branches” does not indicate the scope of the exemption. 29 C.F.R. § 780.109 In determining “farming in all its branches” one must consider a number of circumstances, such as: the nature and purpose of operations of the employer, the character of the place where the employee performs his duties, the general types of activities there conducted, and the purpose and function of such activities with respect to the operations carried on by the employer. 29 C.F.R. § 780.109. As an example, the Code of Federal Regulations provides “fish farming activities fall within the scope of the meaning of ‘farming in all its branches’ and employers engaged in such operations would be employed in agriculture.” 29 C.F.R. § 780.109. The secondary meaning, by contrast, “includes any practices, whether or not they themselves are farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with ‘such’ farming operations.” 29 C.F.R. § 780.105(a).

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<sup>3</sup> Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/manufacture> (last visited January 5, 2016); Oxford Dictionaries, [http://www.oxforddictionaries.com/us/definition/american\\_english/unmanufactured](http://www.oxforddictionaries.com/us/definition/american_english/unmanufactured) (last visited January 5, 2016). Courts have consistently turned to contemporaneous dictionary definitions for statutory language. See e.g. *Kellogg Brown & Root Servs., Inc. v. United States*, 135 S.Ct. 1970, 1976 (2015); *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S.Ct. 1749, 1756 (2014); *Astrue v. Capato*, 132 S.Ct. 2021, 2029 (2012).

The process of “preparing” a commodity for market references activities which precede “delivery to market” and includes “operations normally performed upon farm commodities to prepare them for the farmer’s market.” 29 C.F.R. § 780.151. The term is not “synonymous with ‘preparation for sale.’” The Code of Federal Regulations emphasizes that “‘preparation for market,’ like other practices, must be performed ‘by a farmer or on a farm as incident to or in conjunction with such farming operations’” in order to fall within section 3(f). 29 C.F.R. § 780.151 provides a list of activities, which may be performed in the “preparation for market” of certain commodities and may come within section 3(f):

- (a) Grain, seed, and forage crops. Weighing, binning, stacking, drying, cleaning, grading, shelling, sorting, packing, and storing.
- (b) Fruits and vegetables. Assembling, ripening, cleaning, grading, sorting, drying, preserving, packing, and storing.
- (c) Peanuts and nuts (pecans, walnuts, etc.). Grading, cracking, shelling, cleaning, sorting, packing, and storing.
- (d) Eggs. Handling, cooling, grading, candling, and packing.
- (e) Wool. Grading and packing.
- (f) Dairy products. Separating, cooling, packing, and storing.
- (g) Cotton. Weighing, ginning, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.
- (h) Nursery stock. Handling, sorting, grading, trimming, bundling, storing, wrapping, and packing.
- (i) Tobacco. Handling, grading, drying, stripping from stalk, tying, sorting, storing, and loading.
- (j) Livestock. Handling and loading.
- (k) Poultry. Culling, grading, cooping, and loading.
- (l) Honey. Assembling, extracting, heating, ripening, straining, cleaning, grading, weighing, blending, packaging, and storing.
- (m) Fur. Removing the pelt, scraping, drying, putting on boards, and packing.<sup>4</sup>

In Maneja v. Waialua, the United States Supreme Court considered whether the workers engaged in milling of sugar cane fell within the definition of “agriculture” as defined by the FLSA. The Court found the question of “manufactured state” marked the dividing line between processing as an agricultural function and processing as a manufacturing operation. Maneja v. Waialua Agricultural Co., 349 U.S. 254, 265-270 (1955). In Waialua, the process of milling sugar cane was considered to be a manufacturing process, as it transformed sugar cane from its raw and natural state (though highly perishable and unmarketable) into raw sugar and molasses. Id. The transformation of a commodity from its raw and natural state is “more akin to manufacturing than to agriculture.”<sup>5</sup> The Court eventually found, adherence to the congressional scheme and statutory construction, required a holding that sugar milling falls outside the

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<sup>4</sup> The Certifying Officer notes and the undersigned concurs that these activities “conspicuously fail to describe the processing and packaging of fish, shellfish, or aquaculture products.”

<sup>5</sup> See 2001 DOLWH LEXIS 2 (January 17, 2001).

agricultural exemption of the FLSA and that the express omission of sugar milling marked the “outer limit” of congressional concession to this type of processing. Id.

In In re Domaine Drouhin Oregon, the ALJ considered whether the process of removing stems, twigs, and other debris from the grapes constituted “preparation for market.” The ALJ concluded that such actions would constitute “preparation for market” and come within the definition of “agriculture” if “that was where the process stopped.” The ALJ concluded that the grapes were not being prepared for market as grapes, but rather they were being prepared to be “crushed and processed into wine.” As such, the job tasks were not performed in the process of “yielding farm produce,” but rather to yield a product “processed from farm produce.” In re Domaine Drouhin Oregon, Case No. 2004-TLC-00008 (ALJ June 7, 2004).

In its Notice of Denial, the Certifying Officer failed to consider and address the secondary definition as to whether labor might be classified as “agricultural” or “non-agricultural.” In brief, the Solicitor on behalf of the Certifying Officer argues that “agriculture” is distinct from “seafood” and the processing of seafood is non-agricultural under the FLSA.<sup>6</sup>

Though the cultivation and harvesting of crawfish may fall within the primary definition of “agriculture” under the FLSA, the **boiling, peeling, and packaging** of the crawfish does not. These tasks are not part of the process which would result in the production of crawfish in the same way that milling sugar cane is not part of the production of sugar cane but is rather part of the production of raw sugar or molasses. Such tasks do not result in the process of yielding a commodity, but rather yield a product “processed from farm produce.” In re Domaine Drouhin Oregon, Case No. 2004-TLC-00008 (ALJ June 7, 2004). Furthermore, the process of boiling, peeling, and packaging the crawfish cannot be said to fall within the secondary definition of agriculture for these same reasons. As with the milling of sugar, the boiling of the crawfish so that they may be peeled and packaged, transforms the commodity from its natural and

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<sup>6</sup> It is undisputed that the cultivation and harvesting of the crawfish falls within the definition of agriculture under the FLSA. As previously stated, the Department of Labor has recognized that fish farming falls within the scope of “farming in all of its branches.” 29 C.F.R. § 780.109; Domsea Farms, Inc., 211 NLRB 832 (No. 19-RC-6821) (June 21, 1974). Moreover, crawfish are distinctly unique from oysters, crabs and other types of seafood in those cases cited by the Certifying Officer in brief. Indeed, a number of cases have found the cultivation and harvesting of certain seafood and fish which are farmed in reefs or beyond the shoreline to be “nonagricultural.” See e.g. Araiza-Calzada v. Webb Seafood, Inc., 49 F.Supp. 3d 1001 (N.D. Fl. 2014); Bojorquez-Moreno v. Shore & Ruark Seafood Co., Inc., 92 F. Supp. 3d 459 (E.D. Va. 2015). However, crawfish are unlike traditional seafood in that they are neither cultivated nor harvested from the sea. Rather, the process of cultivating and harvesting crawfish takes place on land, often in fields used for growing rice during other seasons. Thus, the cultivation and harvesting of crawfish is more akin to fish farming than it is to the cultivation and harvesting of traditional seafood.

Despite the Certifying Officer’s contentions, there is no precedent for the determination that “the processing of farmed fish” does not fall within the definition of agriculture. The Certifying Officer relies upon a series of cases which found the processing of certain seafood, such as oysters, crabs, and trout did not fall within the agricultural exemption. However, those opinions were based upon the premise that the seafood in question could not constitute an agricultural commodity. Such a finding was foreclosed, because the seafood was neither cultivated nor harvested on land, but rather came from the sea. See e.g. Bojorquez-Moreno v. Shore & Ruark Seafood Co., Inc., 92 F. Supp. 3d 459 (E.D. Va. 2015); Cordova v. R & A Oysters, Inc., 101 F. Supp. 1192 (S.D. Ala. 2015); Araiza-Calzada v. Webb Seafood, Inc., 49 F.Supp. 3d 1001 (N.D. Fl. 2014); Hendrick v. S. States Coop., Inc., 2010 U.S. Dist. LEXIS 104495 (E.D. NC. 2010); Department of Labor, Opinion Letter, Fair Labor Standards Act, FLSA 2004-2(Feb. 5, 2004), available at [http://www.dol.gov/whd/opinion/FLSA/2004/2004\\_02\\_05\\_2\\_FLSA.pdf](http://www.dol.gov/whd/opinion/FLSA/2004/2004_02_05_2_FLSA.pdf). As such, I find these cases non-persuasive in resolving the present issue.

unmanufactured state into a manufactured one. Thus, the tasks required of the boilers, peelers, and packers are more akin to manufacturing than to agriculture.

Moreover, the process of peeling and packaging the crawfish might constitute “preparation for market” similar to the cleaning and packaging of grapes or fish, were the crawfish not required to be cooked first. Though the Code of Federal Regulations provides a plethora of activities which may be performed on a commodity “in preparation for market,” none consider the cooking of such commodities. Moreover, as mentioned above, those activities which may be performed in “preparation for market” conspicuously omit the processing of fish, shellfish, or aquacultural products. Thus, such activities arguably do not fall within the meaning of “agriculture” as intended by Congress.

Considering the foregoing, I find that the positions of “boilers” and “peelers and packagers” as requested by Employer, do not constitute agricultural labor under the definition of 20 C.F.R. § 655.103(c).

### **ORDER**

In light of the foregoing discussion, it is hereby **ORDERED** that the Certifying Officer’s denial determination is **AFFIRMED**.

**ORDERED** this 6<sup>th</sup> day of January, 2016, in Covington, Louisiana.

**LEE J. ROMERO, JR.**  
Administrative Law Judge