

**In re: LION RAISINS, INC., A CALIFORNIA CORPORATION, AND
BOGHOSIAN RAISIN PACKING CO., INC., A CALIFORNIA
CORPORATION.**

2003 AMA Docket No. F&V 989-7.

Decision and Order filed October 19, 2004.

**AMAA – Agricultural Marketing Agreement Act – Raisin order – Petition contents –
Cognizable claim – Dismissal with prejudice.**

The Judicial Officer affirmed Administrative Law Judge Victor W. Palmer's Order Dismissing Petition with Prejudice. The Judicial Officer stated proceedings under 7 U.S.C. § 608c(15)(A) do not afford a forum to debate questions of policy, desirability, or effectiveness of a marketing order. Moreover, arguments that competitors fare better than Petitioners are not appropriate for consideration in a proceeding under 7 U.S.C. § 608c(15)(A). The Judicial Officer concluded that Petitioners did not state a legally cognizable claim.

Colleen A. Carroll, for Respondent.

Brian C. Leighton, Clovis, California, and Howard A. Sagaser, Fresno, California, for Petitioners.
Order Dismissing Petition with Prejudice issued by Victor W. Palmer, Administrative Law Judge.
Decision and Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

Lion Raisins, Inc., a California corporation, and Boghosian Raisin Packing Co., Inc., a California corporation [hereinafter Petitioners], instituted this proceeding by filing a petition¹ on September 10, 2003. Petitioners instituted the proceeding under the Agricultural Marketing Agreement Act of 1937, as amended [hereinafter the AMAA]; the federal marketing order regulating the handling of "Raisins Produced From Grapes Grown In California" (7 C.F.R. pt. 989) [hereinafter the Raisin Order]; and the "Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders" (7 C.F.R. §§ 900.50-.71) [hereinafter the Rules of Practice]. Petitioners request: (1) that the requirement in sections 989.58(d) and 989.59(d) of the Raisin Order (7 C.F.R. §§ 989.58(d), .59(d)) that United States Department of Agriculture inspectors inspect incoming and outgoing raisins be eliminated; (2) that the United States Department of Agriculture charge "by the hour per inspector" for inspection of incoming and outgoing raisins; and (3) that the United States Department of Agriculture "update its outgoing standards to meet the needs of today's market and consumers" (Pet. ¶ 20).

On October 10, 2003, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], filed a "Motion to Dismiss Petition." Respondent contends the petition should be dismissed with prejudice because the Petition does not contain: (1) the corporate information required by section 900.52(b)(1) of the Rules of Practice (7 C.F.R. § 900.52(b)(1)); (2) the specific provisions of the Raisin Order that Petitioners claim are not in accordance with law, as required by section 900.52(b)(2) of the Rules of Practice (7 C.F.R. § 900.52(b)(2)); (3) a full statement of the facts upon which the Petition is based, as required by section 900.52(b)(3) of the Rules of Practice (7 C.F.R. § 900.52(b)(3)); and (4) the grounds on which the terms or provisions of the Raisin Order are challenged as not in accordance with law, as required by section 900.52(b)(4) of the Rules of

¹Petitioners entitle their Petition "Petition to Enforce and/or Modify Raisin Marketing Order Provisions/Regulations and/or Petition to the Secretary of Agriculture to Eliminate as Mandatory the Use of the USDA's Processed Products Inspection Branch Services for All Incoming and Outgoing Raisins, as Currently Required by 7 C.F.R. §§ 989.58 & 989.59, and to Exempt Petitioner from the Mandatory Inspection Services by USDA for Incoming and Outgoing Raisins and/or any Obligations Imposed in Connection Therewith That Are Not in Accordance with Law" [hereinafter Petition].

Practice (7 C.F.R. § 900.52(b)(4)) (Mot. to Dismiss Pet.). On November 7, 2003, Petitioner Lion Raisins, Inc., filed “Petitioner Lion Raisins, Inc.’s Opposition to Respondent’s Motion to Dismiss Petition”, and on December 3, 2003, Petitioner Boghosian Raisin Packing Co., Inc., filed “Petitioner Boghosian Raisin Packing Co., Inc.’s Opposition to Respondent’s Motion to Dismiss Petition.”

On July 15, 2004, Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] issued an “Order Dismissing Petition with Prejudice” in which the ALJ concluded the Petition did not state a legally cognizable claim and dismissed the Petition with prejudice (Order Dismissing Pet. with Prejudice at 4).

On August 13, 2004, Petitioners appealed the ALJ’s Order Dismissing Petition with Prejudice to the Judicial Officer. On August 27, 2004, Respondent filed “Respondent’s Response to Petition for Appeal Filed by Petitioners Lion Raisins, Inc., and Boghosian Raisin Packing Co., Inc.” On September 7, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I find the ALJ reached the correct result in dismissing the Petition with prejudice. Therefore, I adopt, with minor modifications, the ALJ’s Order Dismissing Petition with Prejudice as the final Decision and Order. Additional conclusions by the Judicial Officer follow the ALJ’s Order Dismissing Petition with Prejudice as restated.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE—7 AGRICULTURE

....

CHAPTER 26—AGRICULTURAL ADJUSTMENT

....

SUBCHAPTER III—COMMODITY BENEFITS

....

§ 608c. Orders regulating handling of commodity

....

(6) Other commodities; terms and conditions of orders

In the case of agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) of this section orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section), no others:

....

(F) Requiring or providing for the requirement of inspection of any such commodity or product produced during specified periods and marketed by handlers.

....

**(15) Petition by handler for modification of order or exemption;
court review of ruling of Secretary**

(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a(6) of this title. Any proceedings brought pursuant to section 608a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

7 U.S.C. § 608c(6)(F), (15).

7 C.F.R.:

TITLE 7—AGRICULTURE

....

**SUBTITLE B—REGULATIONS OF THE DEPARTMENT
OF AGRICULTURE**

....

**CHAPTER IX—AGRICULTURAL MARKETING SERVICE
(MARKETING AGREEMENTS AND ORDERS;
FRUITS, VEGETABLES, NUTS),
DEPARTMENT OF AGRICULTURE**

PART 900—GENERAL REGULATIONS

....

**SUBPART—RULES OF PRACTICE GOVERNING
PROCEEDINGS ON PETITIONS TO MODIFY
OR TO BE EXEMPTED FROM MARKETING ORDERS**

....

§ 900.52 Institution of proceeding.

(a) *Filing and service of petition.* Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *Motion to dismiss petition—(1) Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, the Administrator may, within thirty days after the service of the petition, file with the Hearing Clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or

documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the Judge for consideration.

(2) *Decision by the Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the hearing clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65: *Provided*, That within 20 days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

**PART 989—RAISINS PRODUCED FROM GRAPES
GROWN IN CALIFORNIA**

....

SUBPART—ORDER REGULATING HANDLING

....

GRADE AND CONDITION STANDARDS

§ 989.58 Natural condition raisins.

....

(d) *Inspection and certification.* (1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him. . . . The handler shall submit or cause to be submitted to the committee a copy of such certification, together with such other documents or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

....

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

. . . .
(d) *Inspection and certification.* Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause and [sic] inspection to be made of such raisins to determine whether they meet the then applicable minimum grade and condition standards for natural condition raisins or the then applicable minimum grade standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, and unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

7 C.F.R. §§ 900.52(a)-(c)(2); 989.58(d), .59(d).

**ADMINISTRATIVE LAW JUDGE'S
ORDER DISMISSING PETITION WITH PREJUDICE
(AS RESTATED)**

Petitioners request elimination of the requirement that the raisins they handle be inspected by the United States Department of Agriculture's Processed Products Standardization and Inspection Branch. Petitioners contend the cost to them of these inspections at the \$9-per-ton-applicable-rate is too high. Petitioners allege their plants have fast-moving processing equipment that results in their paying \$108 to \$135 per hour for United States Department of Agriculture inspection. Petitioners allege the hourly rate they pay for United States Department of Agriculture inspection is excessive and unfair since the United States Department of Agriculture employs at their plants only one inspector and never more than two. Additionally, Petitioners assert the resultant hourly charges to Petitioners by the United States Department of Agriculture are higher than the United States Department of Agriculture charges Petitioners' less efficient competitors with slower processing equipment. Petitioners contend they can obtain cheaper and superior inspection privately, albeit their products would not be "USDA inspected." Petitioners claim most of their customers do not want raisins that are inspected by the United States Department of Agriculture, but, instead, prefer Petitioners' quality control inspection certificate. (Pet. ¶¶ 8-14, 15B.)

The handling of California raisins, at the behest of the California raisin industry, is subject to the requirements of the Raisin Order. Sections 989.58(d) and 989.59(d) of the Raisin Order (7 C.F.R. §§ 989.58(d), .59(d)) require inspection and certification of raisins by the United States Department of Agriculture. Petitioners contend these inspection and certification provisions of the Raisin Order and "related order provisions and regulation provisions mandating USDA Inspection Service . . . are arbitrary, capricious, not in accordance with the law, and . . . over-priced" and request their elimination or modification (Pet. ¶ 17).

Federal marketing orders regulating the handling of various fruits and

vegetables come into being only when specifically requested by the industry. Upon industry request, a rulemaking hearing is held which may result in the formulation of a proposed marketing order. Grower members of the affected industry then must vote on whether they wish the handling of their fruits or vegetables to be subject to the terms of the proposed marketing order. Upon a favorable vote by two-thirds of the growers, the marketing order is promulgated and is then administered, subject to oversight by the Secretary of Agriculture and approval by an industry committee.² Under section 989.26 of the Raisin Order (7 C.F.R. § 989.26), the Raisin Administrative Committee was established to consist of 47 members, 35 of whom represent producers (growers), 10 represent handlers, one represents the Cooperative Bargaining Association, and one is a public member. This section of the Raisin Order, together with sections 989.27 through 989.39 of the Raisin Order (7 C.F.R. §§ 989.27-.39), describe the way in which members are selected, their eligibility, term of office, powers, duties, obligations, and other aspects of the Raisin Administrative Committee.

Sections 989.58(d) and 989.59(d) of the Raisin Order (7 C.F.R. §§ 989.58(d), .59(d)) provide that the Raisin Administrative Committee may seek to have inspection of raisins performed by another agency because it would improve the administration of the subpart (7 C.F.R. §§ 989.1-.95). The Raisin Administrative Committee has not sought to have another agency perform raisin inspections. Apparently, the Raisin Administrative Committee finds the inspectors employed by the United States Department of Agriculture's Processed Products Standardization and Inspection Branch to be trustworthy and the certificates they issue to afford industry members and their customers a valuable form of protection that promotes the image of the product.

The actual charges for inspection were negotiated by the Raisin Administrative Committee with the United States Department of Agriculture's Processed Products Standardization and Inspection Branch. The Raisin Administrative Committee is so empowered by section 989.35(a) of the Raisin Order (7 C.F.R. § 989.35(a)). The Processed Products Standardization and Inspection Branch, operated by the Agricultural Marketing Service, is authorized to enter into an agreement regarding inspection charges by 7 C.F.R. § 52.51(b), a regulation promulgated through notice-and-comment rulemaking. The resulting Memorandum of Understanding between the Raisin Administrative Committee and the United States Department of Agriculture is attached as Exhibit B and the fee schedule established pursuant to the Memorandum of Understanding is attached as Exhibit C to Respondent's Motion to Dismiss Petition. Also, attached to Respondent's Motion to Dismiss Petition is a declaration by Mickey Martinez, the Officer in Charge of the United States Department of Agriculture's Processed Products Branch Inspection Service, Agricultural Marketing Service (Exhibit A).

Compared with these fees negotiated by the Raisin Administrative Committee, which was selected to represent the California raisin industry, Petitioners simply allege the fees are too high and disadvantage them in comparison to their competitors. But whether inspections could be performed more cheaply or more efficiently by others and better assure the quality of California raisins are not matters that may be decided in proceedings instituted pursuant to section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)). Proceedings under section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)) do not afford a forum to debate questions of policy, desirability, or effectiveness

²See *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 461-62 (1997).

of order provisions.³

Moreover, Petitioners' arguments that competitors fare better than Petitioners are not appropriate for consideration in these proceedings. As stated in *In re Daniel Strebin*, 56 Agric. Dec. at 1136, citing *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 461-62 (1997):

Moreover, the Supreme Court of the United States makes clear that arguments based upon competition are inapposite in the context of a marketing order, where marketing order committee members and handlers are engaged in what the Court describes as "collective action[.]"

Simply put, none of Petitioners arguments can be said to show that the Raisin Order, any regulation pertaining to the Raisin Order, or any action taken under the Raisin Order or in its respect are "not in accordance with law" as section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)) requires for Petitioners' Petition to be successful.

There are also technical deficiencies with the Petition which would require its dismissal and replacement by an amended petition. But the failure to state a legally cognizable claim is the fatal flaw that leads me to dismiss the Petition with prejudice. Petitioners' attorneys are experts in the laws that apply to the legal world of marketing orders. If Petitioners had some legally cognizable claim, I am sure it would have been coherently expressed. To allow future amended petitions on this subject would be a waste of resources.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Petitioners raise five issues in "Petitioners' Appeal Petition to the Judicial Officer from the ALJ Order Dismissing Petition with Prejudice (7 C.F.R. § 900.65(a))" [hereinafter Appeal Petition]. First, Petitioners assert the ALJ erroneously and inadequately summarized Petitioners' claims (Appeal Pet. at 7). Petitioners identify six ALJ statements that Petitioners assert are erroneous and inadequate. However, a comparison of the Petition with the ALJ's Order Dismissing Petition with Prejudice reveals that the ALJ accurately and adequately summarized Petitioners' claims.

Second, Petitioners contend the ALJ erroneously concluded that proceedings under section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)) do not afford a forum to debate questions of policy, desirability, or effectiveness of order provisions and that Petitioners' arguments that competitors fare better than Petitioners are not appropriate considerations in proceedings under section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)) (Appeal Pet. at 7).

I disagree with Petitioners' contention that the ALJ's conclusions are error. Section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)) only provides a forum in which a handler may seek modification of, or exemption from, an order (or any provision of, or any obligation imposed in connection with, an order) that is "not in accordance with law." Questions of policy, desirability, or effectiveness of an order (or any provision of, or any obligation imposed in connection with, an order) are not appropriate considerations in proceedings

³*In re Daniel Strebin*, 56 Agric. Dec. 1095, 1133 (1997); *In re Sunny Hill Farms Dairy Co.*, 26 Agric. Dec. 201, 217 (1967), *aff'd*, 446 F.2d 1124 (8th Cir. 1971), *cert. denied*, 405 U.S. 917 (1972).

under section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)).⁴ Moreover, arguments based upon competition are inapposite in the context of a marketing order, where marketing order committee members and handlers are engaged in collective action.⁵

Third, Petitioners contend the ALJ erroneously determined Petitioners' claims merely concern questions of Raisin Order policy, desirability, or effectiveness (Appeal Pet. at 8).

Petitioners allege the United States Department of Agriculture's appointment of "its very own inspectors to inspect all incoming and outgoing raisins" is not in accordance with law (Pet. ¶ 15). However, section 8c(6)(F) of the AMAA (7 U.S.C. § 608c(6)(F)) requires that each agricultural commodity marketing order, other than milk marketing orders, contain a term requiring the inspection of the agricultural commodity subject to the marketing order. Petitioners cite section 8c(6)(F) of the AMAA (7 U.S.C. § 608c(6)(F)) (Pet. ¶ 5) and appear to contradict their allegation that the United States Department of Agriculture's appointment of "its very own inspectors to inspect all incoming and outgoing raisins" is not in accordance with law, as follows:

7. Thus, *pursuant to the AMAA*, the Secretary required mandatory incoming inspections and outgoing inspections on all raisins covered by the Raisin Marketing Order, and appointed its very own Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service of the United States Department of Agriculture to provide the "Inspection Service[.]"

Pet. ¶ 7 (emphasis added).

In light of the plain language of section 8c(6)(F) of the AMAA (7 U.S.C. § 608c(6)(F)) and Petitioners' allegation in paragraph 7 of the Petition, I conclude Petitioners do not state a legally cognizable claim in paragraph 15 of the Petition.

In addition, Petitioners state the facts alleged in paragraphs 1 through 16 of the Petition show that sections 989.58(d) and 989.59(e) of the Raisin Order (7 C.F.R. §§ 989.58(d), .59(e))⁶ are not in accordance with law (Pet. ¶ 17). After carefully reviewing the factual allegations in the Petition, I agree with the ALJ's conclusion that the facts alleged in the Petition merely raise questions of Raisin Order policy, desirability, or effectiveness and Petitioners have not alleged facts that support a legally cognizable claim in a proceeding instituted under section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)).

Fourth, Petitioners contend their claims that the United States Department of Agriculture negligently conducted inspections of their raisins and negligently recorded results of those inspections are legally cognizable claims in a proceeding instituted under section 8c(15)(A) of the AMAA (7 U.S.C. §

⁴See note 3.

⁵*In re Daniel Strebin*, 56 Agric. Dec. 1095, 1136 (1997) (citing *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 461-62 (1997)).

⁶Petitioners state their reference to section 989.59(e) of the Raisin Order (7 C.F.R. § 989.59(e)) in the Petition is a typographical error and Petitioners meant to refer to section 989.59(d) of the Raisin Order (7 C.F.R. § 989.59(d)) (Petitioner Lion Raisins, Inc.'s Opposition to Respondent's Motion to Dismiss Petition at 4; Petitioner Boghosian Raisin, Packing Co., Inc.'s Opposition to Respondent's Motion to Dismiss Petition at 3).

608c(15)(A)) and the ALJ erroneously failed to address these claims (Appeal Pet. at 9-10).

I disagree with Petitioners' contention that the ALJ erroneously failed to address their claims of United States Department of Agriculture negligence. The ALJ addressed all of Petitioners' allegations, as follows:

Simply put, none of the arguments set forth by Petitioners can be said to show that the Marketing Order, any regulation pertaining to it, or any action taken under it or in its respect are "not in accordance with law" as the Act requires for their Petition to be successful.

Order Dismissing Petition with Prejudice at 4.

Moreover, I conclude Petitioners' allegations of United States Department of Agriculture negligence raise questions of inspector performance, which is not a claim legally cognizable in a proceeding instituted under section 8c(15)(A) of the AMAA (7 U.S.C. § 608c(15)(A)).

Fifth, Petitioners contend the Petition contains two succinct cognizable claims and, if the ALJ did not understand Petitioners' claims, he should have allowed Petitioners to amend the Petition to make the claims more succinct (Appeal Pet. at 10).

The ALJ's Order Dismissing Petition with Prejudice indicates that the ALJ understood Petitioners' claims. Moreover, Petitioners do not cite, and I cannot locate, any portion of the ALJ's Order Dismissing Petition with Prejudice indicating that the ALJ dismissed the Petition because Petitioners' claims were not succinctly stated.

For the foregoing reasons, the following Order should be issued.

ORDER

1. Petitioners' Petition, filed September 10, 2003, is dismissed with prejudice.
2. This Order shall become effective on the day after service on Petitioners.

RIGHT TO JUDICIAL REVIEW

Petitioners have the right to obtain review of this Order in any district court of the United States in which district Petitioners are inhabitants or have their principal places of business. A bill in equity for the purpose of review of this Order must be filed within 20 days from the date of entry of this Order. Service of process in any such proceeding may be had upon the Secretary of Agriculture by delivering a copy of the bill of complaint to the Secretary of Agriculture.⁷ The date of entry of this Order is October 19, 2004.

⁷See 7 U.S.C. § 608c(15)(B).