

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AMA Docket No. FV-10-0170
)
American Dried Fruit Co.,)
a California proprietorship,)
) **Order Denying Petition**
) **for Reconsideration**
Petitioner)

PROCEDURAL HISTORY

On September 8, 2010, American Dried Fruit Co. filed “Petitioner’s Petition for Reconsideration of the Judicial Officer’s Decision and Order Dated August 20, 2010” [hereinafter Petition for Reconsideration]. The Administrator, Agricultural Marketing Service, United States Department of Agriculture, did not file a response to American Dried Fruit Co.’s Petition for Reconsideration, and on October 1, 2010, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on the Petition for Reconsideration.

CONCLUSIONS BY THE JUDICIAL OFFICER

On March 11, 2010, American Dried Fruit Co. filed a Petition¹ in which it contended the United States Department of Agriculture's [hereinafter USDA] interpretation of the marketing order regulating the handling of "Raisins Produced From Grapes Grown In California" (7 C.F.R. pt. 989) as requiring that only a handler may apply for, and obtain, inspection and certification of raisins pursuant to 7 C.F.R. §§ 989.58(d)(1) and 989.59(d), is unlawful (Pet. ¶¶ 4-6). American Dried Fruit Co. requested that I direct USDA to perform raisin inspection and certification under 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) for any financially interested party that a raisin handler compels to apply for inspection and certification (Pet. ¶ 18).

In *In re American Dried Fruit Co.* __ Agric. Dec. __ (Aug. 20, 2010), in which I dismissed with prejudice American Dried Fruit Co.'s March 11, 2010, Petition, I stated USDA has consistently interpreted 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) as requiring a handler to apply for, and obtain, inspection and certification. American Dried Fruit Co. contends this statement is error and cites four examples as support for its contention that USDA has interpreted 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) as allowing any interested

¹American Dried Fruit Co. entitles its petition "Petition Challenging USDA's Unlawful Interpretation and Application of Marketing Order Provisions and Regulations; Petition to Enforce and/or Modify Raisin Marketing Order; and Petition to Allow Handler's [sic] to Cause Inspection and Certification by Compelling Other Interested Parties to Apply and Pay for Marketing Order Inspection Services" [hereinafter Petition].

party to apply for, and obtain, inspection and certification pursuant to 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) (Pet. for Recons.).

First, American Dried Fruit Co. argues the requirement in 7 C.F.R. § 989.159(c)(2) that Form FV-146 be used to certify the grade and condition of raisins demonstrates that any interested party may apply for inspection and certification pursuant to 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) (Pet. for Recons. at 2). American Dried Fruit Co. bases this argument on the use of Form FV-146 in connection with inspection and certification of products under 7 C.F.R. pt. 52 in which the term “applicant” is defined, as follows:

§ 52.2 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

.....

Applicant. “Applicant” means any interested party who requests inspection service under the regulations in this part.

7 C.F.R. § 52.2.

I find American Dried Fruit Co.’s argument without merit. As an initial matter, the term “applicant” is not used in 7 C.F.R. § 989.58(d)(1) or 7 C.F.R. § 989.59(d).

Moreover, the definitions in 7 C.F.R. § 52.2 are, by the terms of the introductory language in 7 C.F.R. § 52.2, applicable only to terms used in 7 C.F.R. pt. 52. The definitions in 7 C.F.R. § 52.2 have no applicability to 7 C.F.R. pt. 989. Further still, the definition of the term “applicant” in 7 C.F.R. § 52.2 is, by its terms, limited to parties who request

inspection services under 7 C.F.R. pt. 52. The definition of the term “applicant” in 7 C.F.R. § 52.2 has no applicability to 7 C.F.R. pt. 989. Finally, the use of Form FV-146 in connection with both the inspection and certification of products under 7 C.F.R. pt. 52 and the inspection and certification of raisins under 7 C.F.R. pt. 989 does not make the definitions in 7 C.F.R. pt. 52 applicable to 7 C.F.R. pt. 989.

American Dried Fruit Co. also cites a USDA “Handler’s Guide,” a USDA “Grading Manual,” and a USDA “Inspection Manual” as support for its contention that USDA has interpreted 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) as allowing any interested party to apply for, and obtain, inspection and certification pursuant to 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) (Pet. for Recons. at 3-4). American Dried Fruit Co. did not attach these documents to its Petition for Reconsideration, and I cannot locate these documents elsewhere in the record. Without these documents before me, I decline to consider whether they support American Dried Fruit Co.’s contention.

For the foregoing reasons, the following Order is issued.

ORDER

American Dried Fruit Co.'s Petition for Reconsideration, filed September 8, 2010,
is denied. This Order shall become effective upon service on American Dried Fruit Co.

Done at Washington, DC

October 7, 2010

William G. Jenson
Judicial Officer