

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AMAA Docket No. 11-0334  
)  
Burnette Foods, Inc., )  
a Michigan corporation, )  
)  
Petitioner )

**Ruling Denying the Administrator’s Motion for Stay**

On March 25, 2014, the Acting Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], filed a Motion to Stay Decision and Order, Pending Appeal in which the Administrator requests a stay of *In re Burnette Foods, Inc.*, \_\_ Agric. Dec. \_\_ (Mar. 18, 2014), pending completion of the appeal process. On April 4, 2014, Burnette Foods, Inc., filed Objection to Respondent’s Motion to Stay Decision and Order, Pending Appeal.

The rules of practice applicable to this proceeding,<sup>1</sup> provide that an administrative law judge’s decision shall become final without further procedure 35 days after service of the administrative law judge’s decision, unless the decision is appealed to the Secretary of Agriculture by a party to the proceeding.<sup>2</sup> On April 3, 2014, the Administrator appealed Administrative Law Judge Jill S. Clifton’s [hereinafter the ALJ] decision, *In re Burnette Foods,*

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<sup>1</sup>The rules of practice applicable to this proceeding are 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].

<sup>2</sup>7 C.F.R. § 900.64(c).

*Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 18, 2014), to the Judicial Officer. As the Administrator is a party to this proceeding<sup>3</sup> and has filed a timely appeal of the ALJ's decision to the Judicial Officer,<sup>4</sup> *In re Burnette Foods, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 18, 2014), will not become final and will have no effect pending final disposition of this proceeding by the Judicial Officer.<sup>5</sup> Therefore, a stay of *In re Burnette Foods, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 18, 2014), pending completion of the appeal process, would be mere surplusage, and I deny the Administrator's Motion to Stay Decision and Order, Pending Appeal.

Done at Washington, DC

April 9, 2014

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William G. Jenson  
Judicial Officer

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<sup>3</sup>See Answer of Respondent at 1, 8; *In re Burnette Foods, Inc.*, \_\_\_ Agric. Dec. \_\_\_, slip op. ¶ 7 at 10 (Mar. 18, 2014).

<sup>4</sup>The Judicial Officer has been delegated authority to act for the Secretary of Agriculture in proceedings subject to the Rules of Practice. See 7 C.F.R. §§ 2.35(a)(11), 900.51(c).

<sup>5</sup>The ALJ specifically addressed the issue of the finality of *In re Burnette Foods, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 18, 2014), as follows:

#### **Finality**

43. This Decision shall be final and effective 35 days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service. See 9 [sic] C.F.R. §§ 900.64 and 900.65.

*In re Burnette Foods, Inc.*, \_\_\_ Agric. Dec. \_\_\_, slip op. ¶ 43 at 22-23 (Mar. 18, 2014).