

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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| In re:                   | ) | AMA Docket No. M-10-0283                  |
|                          | ) |   |
| GH Dairy, a partnership, | ) | <b>Rulings Denying Motion for Review</b>  |
|                          | ) | <b>and Dismissing Motion to Intervene</b> |
| Petitioner               | ) | <b>and Order Dismissing Petition</b>      |

GH Dairy instituted this administrative proceeding by filing a Petition<sup>1</sup> and a “Motion for Direct Expedited Review and Issuance of Final Order, by the Secretary” [hereinafter Motion for Direct Review], on May 19, 2010. GH Dairy instituted the proceeding pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674) [hereinafter the AMAA], 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]. GH Dairy seeks direct review of its Petition by the Secretary of Agriculture or his delegate, the Judicial Officer, without having any part of the instant proceeding conducted before an administrative law judge (Mot. for Direct Review at 1, 7-8; Pet. at 17).

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<sup>1</sup>GH Dairy entitles its Petition “Verified Petition for Expedited Adjudicatory Review of Final Agency Decision, Published at 75 Fed. Reg. 10122 (Mar. 4, 2010), and of Final Order, Published at 75 Fed. Reg. 21157 (Apr. 23, 2010), in National Hearing Docket No. AMS-DA-09-0007” [hereinafter Petition].

On May 28, 2010, International Dairy Foods Association and National Milk Producers Federation filed “Motion for Leave to Participate, and Brief of the International Dairy Foods Association and the National Milk Producers Federation in Opposition to Petitioner’s Request for Expedited, Direct Review” [hereinafter Motion to Intervene]. On June 7, 2010, the Administrator, Agricultural Marketing Service, United States Department of Agriculture, filed “Opposition to Petitioner’s Motion for Direct Expedited Review, and Issuance of Final Adjudicatory Order, by the Secretary.”

On June 22, 2010, GH Dairy filed “Consolidated Response in Opposition to the Intervention of the National Milk Producers Federation (NMPPF) and the International Dairy Foods Association (IDFA) and Reply in Support of Motion for Direct and Expedited Review by the Secretary.” On June 24, 2010, the Hearing Clerk transmitted the record to me for a ruling on GH Dairy’s Motion for Direct Review, a ruling on International Dairy Foods Association and National Milk Producers Federation’s Motion to Intervene, and consideration of the Petition.

The Rules of Practice provide for issuance of a decision by the Judicial Officer, without the prior benefit of an administrative law judge’s initial decision, as follows:

**§ 900.71 Hearing before Secretary.**

The Secretary may act in the place and stead of a judge in any proceeding hereunder. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final order in the proceeding: *Provided*, That he may issue a tentative order in which event

the parties shall be afforded an opportunity to file exceptions before the issuance of the final order.

7 C.F.R. § 900.71. However, the plain language of 7 C.F.R. § 900.71 provides that the procedures in the Rules of Practice, through the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, be completed prior to the Hearing Clerk's transmission of the record to the Judicial Officer for issuance of the Judicial Officer's decision. Those procedures have not been completed in the instant proceeding, and the Rules of Practice contain no provision for truncating a proceeding in the manner sought by GH Dairy.

GH Dairy cites two cases in support of its Motion for Direct Review and Petition; I find both of these cases inapposite. *Milk Industry Foundation v. Glickman*, 949 F. Supp. 882 (D.D.C. 1996), does not address the Rules of Practice. *In re Exeter Orchards Ass'n* (Order With Respect to Answer to Application for Interim Relief), 28 Agric. Dec. 1 (1969), addresses the time for filing a response to a request for interim relief under 7 C.F.R. § 900.70. GH Dairy has not requested interim relief.

Thus, GH Dairy's Motion for Direct Review is denied and GH Dairy's Petition, which seeks premature "[d]irect adjudicatory review by the Secretary or his delegate, the Judicial Officer" (Pet. at 17), is dismissed. As GH Dairy's Petition is dismissed, I also dismiss International Dairy Foods Association and National Milk Producers Federation's Motion to Intervene, as moot.

For the foregoing reasons, the following Rulings and Order are issued.

**RULINGS AND ORDER**

1. GH Dairy's Motion for Direct Review, filed May 19, 2010, is denied.
2. GH Dairy's Petition, filed May 19, 2010, is dismissed.
3. International Dairy Foods Association and National Milk Producers Federation's Motion to Intervene, filed May 28, 2010, is dismissed.

Done at Washington, DC

June 28, 2010

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William G. Jenson  
Judicial Officer