

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AMA PPRCIA Docket No. 05-0001
)	
Mark McDowell, Jim Joens,)	
Richard Smith, and the Campaign)	
for Family Farms, including Iowa)	
Citizens for Community)	
Improvement, Land Stewardship)	
Project, Missouri Rural Crisis)	
Center, Illinois Stewardship)	
Alliance, and Citizens Action)	
Coalition of Indiana on behalf of)	
their pork checkoff-paying hog)	
farmer members,)	
)	
Petitioners)	Order Denying Interim Relief

On December 1, 2006, Mark McDowell, Jim Joens, Richard Smith, and the Campaign for Family Farms [hereinafter Petitioners] filed Petitioners' Motion for Injunction Pending Appeal and a Memorandum in Support of Petitioners' Motion for Injunction Pending Appeal. On December 5, 2006, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], filed Respondent's Opposition to Petitioners' Motion for Injunction Pending Appeal. On December 6, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for consideration of Petitioners' Motion for Injunction Pending Appeal.

Petitioners' Motion for Injunction Pending Appeal is an application for interim relief pending appeal. The rules of practice governing this proceeding (7 C.F.R. §§ 900.52(c)(2)-.71, 1200.50-.52) provide that a person who has filed a petition pursuant to 7 C.F.R. § 900.52 may apply to the Secretary of Agriculture for interim relief, pending final determination of the proceeding.¹ However, Petitioners filed Petitioners' Second Amended Petition² pursuant to 7 C.F.R. § 1200.52, not 7 C.F.R. § 900.52; therefore, interim relief is not available to Petitioners.³

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

¹7 C.F.R. § 900.70(a).

²Petitioners instituted this proceeding by filing a petition on March 14, 2005; however, Administrative Law Judge Jill S. Clifton dismissed Petitioners' petition (Dismissal Without Prejudice filed April 12, 2005). Petitioners filed an Amended Petition on May 6, 2005, but on June 28, 2005, Petitioners filed a motion for leave to file a second amended petition and a Second Amended Petition. On July 8, 2005, Administrative Law Judge Jill S. Clifton granted Petitioners' motion for leave to file Petitioners' Second Amended Petition (Order filed July 8, 2005). Based on the record before me, I find Petitioners' Second Amended Petition, filed June 28, 2005, is the operative pleading in this proceeding.

³*In re Gallo Cattle Co.* (Order Denying Interim Relief), 64 Agric. Dec. 689, 690 (2005) (stating the petitioner filed a petition pursuant to 7 C.F.R. § 1200.52; therefore, interim relief is not available to the petitioner); *In re Handlers Against Promoflor* (Order Denying Interim Relief), 55 Agric. Dec. 1042, 1043 (1996) (stating the petitioner filed a petition pursuant to 7 C.F.R. § 1200.52; therefore, interim relief, which is only available to a person who has filed a petition pursuant to 7 C.F.R. § 900.52, is not available to the petitioner); *In re Gallo Cattle Co.* (Order Denying Interim Relief), 55 Agric. Dec. 340, 341 (1996) (stating the petitioner filed a petition pursuant to 7 C.F.R. § 1200.52; therefore, interim relief, which is only available to a person who has filed a petition pursuant to 7 C.F.R. § 900.52, is not available to the petitioner), *appeal dismissed*, No. CIV S-96-1146 EJM/GGH (E.D. Cal. Nov. 13, 1996), *aff'd*, 159 F.3d 1194 (9th Cir. 1998), *reprinted in* 57 Agric. Dec. 895 (1998).

ORDER

Petitioners' Motion for Injunction Pending Appeal is denied.

Done at Washington, DC

December 7, 2006

William G. Jenson
Judicial Officer