

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-99-0010  
)  
Excel Corporation, )  
)  
Respondent ) **Stay Order**

On January 30, 2003, I issued a Decision and Order concluding Excel Corporation [hereinafter Respondent] violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229) [hereinafter the Packers and Stockyards Act], and the regulations issued under the Packers and Stockyards Act (9 C.F.R. §§ 201.1-.200).<sup>1</sup> Harold W. Davis, Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter Complainant], and Respondent each filed a timely petition for reconsideration. Under the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151), which are applicable to this proceeding, a timely-filed petition for reconsideration automatically stays a decision of the Judicial Officer pending the determination to grant

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<sup>1</sup>*In re Excel Corporation*, 62 Agric. Dec. 196 (2003).

or deny the petition for reconsideration.<sup>2</sup> On March 26, 2004, I issued an Order:

- (1) denying the petitions for reconsideration;
- (2) lifting the automatic stay; and
- (3) reinstating the January 30, 2003, Order.<sup>3</sup>

On March 31, 2004, Respondent filed “Excel Corporation’s Motion for Stay of the Agency’s Order of March 26, 2004” [hereinafter Motion for Stay]. Respondent states it intends to file a petition for review of the Judicial Officer’s January 30, 2003, and March 26, 2004, Orders in the United States Court of Appeals for the Tenth Circuit and requests a stay pending the outcome of proceedings for judicial review. On April 2, 2004, Patrice Harps, counsel for Complainant, informed the Office of the Judicial Officer, by telephone, that Complainant would not file a response to Respondent’s Motion for Stay. On April 6, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent’s Motion for Stay.

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

### **ORDER**

The Order in *In re Excel Corporation*, 62 Agric. Dec. 196 (2003), which was reinstated in *In re Excel Corporation*, 63 Agric. Dec. \_\_\_\_ (Mar. 26, 2004) (Order Denying Pets. for Recons.), is stayed. This Stay Order is issued *nunc pro tunc* and is

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<sup>2</sup>7 C.F.R. § 1.146(b).

<sup>3</sup>*In re Excel Corporation*, 63 Agric. Dec. \_\_\_\_ (Mar. 26, 2004) (Order Denying Pets. for Recons.).

effective March 31, 2004. This Stay Order shall remain effective until the Judicial Officer lifts the Stay Order or a court of competent jurisdiction vacates the Stay Order.

Done at Washington, DC

April 6, 2004

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William G. Jenson  
Judicial Officer