

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 section 201.99(a) of the regulations issued under the Packers and Stockyards Act (9 C.F.R. § 201.99(a)). *In re Excel Corporation*, 62 Agric. Dec. ____ (Jan. 30, 2003). On January 31, 2003, Respondent filed “Excel Corporation’s Motion for Stay of the Agency’s Decision and Order of January 30, 2003” [hereinafter Motion for Stay]. Respondent states it intends to file a petition for review of *In re Excel Corporation*, 62 Agric. Dec. ____ (Jan. 30, 2003), with the United States Court of Appeal for the Tenth Circuit and requests a stay pending the outcome of proceedings for judicial review.

Mr. Brett T. Schwemer, counsel for Respondent, telephoned me on January 31, 2003, and urged me to expedite a ruling on Respondent’s Motion for Stay to forestall Respondent’s need to seek a stay in the United States Court of Appeals for the Tenth

Circuit. I informed Mr. Schwemer that I would contact Ms. Patrice H. Harps, counsel for Harold W. Davis, Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter Complainant], to determine if Complainant intends to respond to Respondent's Motion for Stay and, if so, to order Complainant to expedite the response to Respondent's Motion for Stay.

Ms. Harps informed me that Complainant intends to file a petition for reconsideration of *In re Excel Corporation*, 62 Agric. Dec. ____ (Jan. 30, 2003). 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 or deny the petition for reconsideration.¹

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

ORDER

The Order in *In re Excel Corporation*, 62 Agric. Dec. ____ (Jan. 30, 2003), is stayed. This Stay Order is issued *nunc pro tunc* and is effective January 31, 2003. This Stay Order shall remain effective until one of the parties files a timely petition for reconsideration, at which time *In re Excel Corporation*, 62 Agric. Dec. ____ (Jan. 30,

¹See 7 C.F.R. § 1.146(b).

2003), shall be automatically stayed pending the determination to grant or deny the petition for reconsideration. If neither party files a timely petition for reconsideration, 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

February 4, 2003

William G. Jenson
Judicial Officer