

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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

On January 30, 2003, I issued a Decision and Order concluding Excel Corporation 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), and ordering Excel Corporation to cease and desist from violating 9 C.F.R. § 201.99(a).¹ Harold W. Davis, Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], and Excel Corporation each filed a timely petition for reconsideration, both of which I denied.²

¹*In re Excel Corporation*, 62 Agric. Dec. 196 (2003).

²*In re Excel Corporation* (Order Denying Pets. for Recons.), 63 Agric. Dec. 317 (2004).

On March 31, 2004, Excel Corporation filed a motion for stay pending the outcome of proceedings for judicial review. On April 6, 2004, I issued a Stay Order *nunc pro tunc* effective March 31, 2004.³

On February 15, 2005, the United States Court of Appeals for the Tenth Circuit issued a decision affirming my finding that Excel Corporation violated the Packers and Stockyards Act and 9 C.F.R. § 201.99(a), but modifying my January 30, 2003, cease and desist order.⁴ On September 6, 2007, the Deputy Administrator filed a motion to lift the April 6, 2004, Stay Order. On September 27, 2007, Excel Corporation informed the Office of the Hearing Clerk, by telephone, that Excel Corporation did not oppose the Deputy Administrator's motion to lift the April 6, 2004, Stay Order. On September 27, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on the Deputy Administrator's motion to lift the April 6, 2004, Stay Order.

Proceedings for judicial review are concluded and Excel Corporation has no objection to the Deputy Administrator's motion to lift the stay order. Therefore, the April 6, 2004, Stay Order is lifted; and the Order issued in *In re Excel Corporation*, 62 Agric. Dec. 196 (2003), as modified by *Excel Corporation v. U.S. Dep't of Agric.*, 397 F.3d 1285 (10th Cir. 2005), is effective as follows.

³*In re Excel Corporation* (Stay Order), 63 Agric. Dec. 335 (2004).

⁴*Excel Corporation v. U.S. Dep't of Agric.*, 397 F.3d 1285 (10th Cir. 2005).

ORDER

Excel Corporation, its agents and employees, directly or indirectly through any corporate or other device, in connection with its purchases of hogs on a carcass merit basis, shall cease and desist from failing to make known to sellers, or their duly authorized agents, prior to purchasing livestock, any change in the formula used to estimate lean percent.

The Order in this Order Lifting Stay Order shall become effective on the day after service of this Order Lifting Stay Order on Excel Corporation.

Done at Washington, DC

October 1, 2007

William G. Jenson
Judicial Officer

In re: EXCEL CORPORATION.
P. & S. Docket No. D-99-0010.
Order Lifting Stay Order filed October 1, 2007.

Patrice H. Harps and Eric Paul, for Complainant.
John R. Fleder, Philip C. Olsson, and Brett T. Schwemer, Washington, DC, and Jeff P.
DeGraffenreid, Wichita, KS, for Respondent.
Order issued by William G. Jenson, Judicial Officer.