Testimony of Ken Bull
Vice President for Cattle Procurement
Excel Corporation, Wichita, Kansas
Before the Senate Agriculture Committee

April 22, 2003
Thank you Senator Talent for giving me the opportunity to testify before your committee today on what I believe is a well intentioned, yet severely flawed law.

Mandatory country of origin labeling -COOL for short -for beef and pork is a concept that has been discussed for many years. As I understand it, supporters believe that American consumers want to know more about where their food comes from and are willing to pay more to support the infrastructure necessary to identity preserve their food. Some supporters I believe are motivated by another reason -to block the trade of cattle and meat with U.S. trading partners -especially Canada and Mexico.

COOL is now the law, and we are actively trying to figure out what we're going to do to comply with it. I appreciate the chance today to highlight for the committee the complexities that we will face as a result of this law.

First -this is a retail labeling law that mandates there must be a "verifiable audit trail" to prove that the labels on products are true and accurate. The law also prescribes $10,000 penalties for violations of the law.

In an effort to better understand the law I recently met with AMS staff in Washington to ensure that my read of the law was rightand it is. A verifiable audit trail means that I must be able to provide documents that back up the claims made on the meat I market to our retail customer. In order for me to do this, the feeder or auction barn from whom I buy must be able to provide these documents and I must be able to attach these documents to the meat I sell at retail.
In addition I have been notified by retailers that if I intend to sell them meat I will have to assume liability for any misrepresentation on their labels -so you can imagine I'm goirlg to take every step necessary to ensure that I'm keeping my customer -and myself -in compliance with the law. Finally, retailers are demanding that I develop an auditable record keeping system that will give them the assurance that we will be able to comply and not subject them to possible problems.

An additional concern that has not been identified is that under the meat inspection act, which is governed by another agency, the Food Safety Inspection Service, to apply a false label to a product is to ship misbranded product. This is punishable as a felony and the product involved is likely subject to recall. I'm not going to risk going to jail for selling the product or going to subject my company to a recall - so again, you can bet I'm going to follow the law. I simply cannot certify anything I do not know to be absolutely true. This interpretation of the meat act was confirmed when I met several weeks ago with the Deputy Administrator of the FSIS and the chief of the labeling branch.

While we already do some branding today -it is based on attributes that reflect the market niche a retailer wants to uniquely fill. These brands are reliant on factors that are applied in our plant -and importantly, are cost effective. The COOL brand relies on factors from the birth of the animal, following it through the production phase and into our plants, then on to retail, all at significant cost and

questionable demand.

We invest significant revenue in developing and marketing brands. These investments are done only after significant research to demonstrate that the benefits or returns will far outweigh the costs, There is much speculation on the cost of COOL -and I certainly have my own idea of the cost, but frankly I believe the true cost is that there stands to be significant change in the cattle and hog industry as a result of this law. We have done cost estimates that quickly led us to conclude that we are not going to make the .investments it would take to be able to run our plants the way we run them today. To create the kind of identity preservation system this law requires would cost us $40-50 million per plant -and even then, there would be the risk of an unintentional mistake.

A more likely scenario is that packers would call only on feeders that have the best, most reliable, audit proof record systems -especially electronic ear tags. I met with the deputy administrator of the USDA Packers and Stockyards Administration to ensure that this was consistent with P&S regulations, and I have been assured that steps such as these are entirely within the scope of the law. We will seek to maintain a pro-active dialogue with the agency' as this unfolds. We believe we are on solid footing with P&S in saying that if we suspect that records are not reliable we will have a difficult time being able to bid on livestock.

We believe one probable outcome of the law is that packers would most likely dedicate plants as U.S. only origir) or mixed origin and then segregate production by days so that only like-origin animals are processed on given days. This move wolJld eliminate marketing options that producers currently enjoy.

Today we sort beef carcasses in about 27 different ways -by grade, certified programs and by other factors. Under this law we layer in at least a doubling of these sorts. Our coolers are the size of football fields -and the changes this law necessitates aren't cheap. One example of an unrealized cost is that currently FSIS regulations require us to leave a three-minute gap between grade sorts. Down time in our plants is about $1100 per minute -so increasing the number of these three-minute gaps adds up in a hurry.

Of particular concern is something we learned from AMS -and that is there is zero tolerance for error. In our meeting with AMS we painted a hypothetical scenario that goes like this --say we painted processed a group of cattle on Monday and in reviewing records we found that somebody made a mistake and a Mexican born animal got into the mix of 1500 head of U.S. born, raised and slaughtered. We learned from AMS that in that scenario all 1500 head are potentially mislabeled or misbranded -meaning we possibly have created a huge list of violations. We must notify the retailer and the retailer must not market the product because it would be a willful violation on every package of meat from that 1500 head of livestock. All of the product from these 1500 head that was going into retail is now subject to a class three recall -bringing great harm to our reputation and our brand. This meat would now have to be diverted into a food service channel at additional cost and substantial discount -all by virtue of a simple human error -with no impact to food safety whatsoever.

Another huge concern for us is the impact on cow/calf operators and the dairy industry. There are beef cows as much as a dozen years old -and many of these animals do not have acceptable documentation. Dairy cows live five to eight years, and many have

crossed the Canadian border. There is insufficient documentation here as well. Much of the cow beef ends up as lean trim that is blended with less lean trim for ground beef production and sold at either retail or food service. Under the law this cow beef will be relegated to food service as it's only market f:or a long time. If you're a cow calf or dairy operator you'll want to pay close attention to this loss of the retail demand base, and the marketability of these animals. AMS again has confirmed our observations and I would strongly encourage producers to understand this likely possibility. In closing -there is much to be learned as the law and its enforcement unfolds. USDA has to implement the law that was passed, and from where I sit, I see the department doing just that. My hat is off to Undersecretary Hawks and his team in doing this unenviable job. AMS, P&S and FSIS have their work cut out for them. So do we. I am happy to answer any questions you might have.