Separating Fiction from Truth:
How the Voluntary COOL Bill will Impact the U.S. Cattle Industry

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The House Agriculture Committee recently passed the Food Promotion Act of 2004 (HR 4576), which repeals the mandatory country-of-origin labeling law (Mandatory COOL Law) and replaces it with a "voluntary" country-of-origin labeling program, HR 4576 (Voluntary COOL Bill). The Voluntary COOL Bill is a flawed bill marred by confusion and misinformation. It produces no benefits and only hinders the needs and wants of cattle producers and beef consumers. Therefore, it is important to separate ***Fiction*** from **Truth.**

Fiction: *The Voluntary COOL Bill will result in more consumer products being labeled.*

Truth: This prediction is counterintuitive because the Voluntary COOL Bill is patterned exclusively after the voluntary USDA labeling program that went into effect two years ago when USDA issued its *Guidelines for Interim Voluntary Country of Origin Labeling* (Existing Voluntary Program).[1] USDA has reported no measurable participation in the Existing Voluntary Program by U.S. packers or retailers, thus providing empirical evidence that the similarly structured Voluntary COOL Bill would likewise be ignored. Furthermore, as recently as August 3, 2004, J. Patrick Boyle, President and CEO of the American Meat Institute (which represents meat processors and poultry processors in the United States) argued that COOL information is not important to U.S. consumers.[2] It is illogical to expect packers and retailers to voluntarily comply with a new labeling program that is exclusively patterned after the Existing Voluntary Program packers and retailers have shunned for two years, particularly given recent statements by food industry leaders that they don't believe labeling is necessary at all.

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[1] Establishment of Guidelines for the Interim Voluntary Country of Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946, Federal Register, Vol. 67, No. 198, Friday, October 11, 2002, at 63367 - 63375. The Voluntary COOL Bill (HR 4576, Food Promotion Act of 2004, Section 281 et al, 108th Congress, 2nd Session) contains the same functional components, the same cost structure, and the same requirements for an audit chain as does this Existing Voluntary Program:

A. The definitions of covered products are nearly identical: Both include only ground beef and raw muscle cuts of beef. Neither includes cooked beef served at food service establishments.
B. The criteria for a USA label are the same: Both require that beef be derived from an animal born, raised, and slaughtered in the U.S. in order to qualify for a USA label.
C. The criteria for verifying origin are the same: Both provide USDA with the authority to require labeling participants to maintain a verifiable recordkeeping audit trail that will permit USDA to verify compliance with the program.

[2] "Make COOL Meat Labeling Voluntary," J. Patrick Boyle, Guest Opinion, Billings Gazette, August 3, 2004. Boyle stated, "We as consumers want to know pertinent information about the food products we purchase, such as its price, nutritional value, calorie content, sell-by dates and safe handling instructions. But only the Congress, in its infinite wisdom, would believe that consumers are interested in the family tree of fresh meats, produce, seafood and peanuts sold in grocery stores. In fact, surveys repeatedly show that consumers care most about price, freshness and quality."

In addition, the Voluntary COOL Bill actually narrows the scope of products to be labeled, as compared to the Mandatory COOL Law - by restricting the definition of covered products to only raw, unprocessed beef.[3] Thus, not only does the Voluntary COOL Bill exclude beef served at food service establishments (restaurants), but it further excludes cooked products sold at retail.

Fiction: *The Voluntary COOL Bill offers greater incentives for packers and retailers to label.*

Truth: The Voluntary COOL Bill actually offers a tremendous disincentive for voluntary participation because it maintains the same level of penalties for violations as the Mandatory COOL Law – up to $10,000 per violation.[4] However, the Existing Voluntary Program, which has not been accepted by packers and retailers, contains no such penalties, and yet there has been no measurable participation.[5] It is illogical to expect packers and retailers, who already maintain there is no economic benefit to labeling, to voluntarily subject themselves to the risk of a $10,000 penalty per violation. The Mandatory COOL Law does not need an incentive to cause packers and retailers to label – it establishes a legal mandate to label.

Fiction: *The Voluntary COOL Bill better protects the privacy rights of producers.*

Truth: The Voluntary COOL bill actually removes the privacy protection for producers contained in the Mandatory COOL Law.[6] The Mandatory COOL Law prohibits the use of a mandatory animal identification system for verifying origin.[7] Thus, producers are protected under the Mandatory COOL Law from disclosing any information other than what is needed to verify from which country their cattle originated. Because the Voluntary COOL Bill removes this protection, packers and retailers can demand more information from producers as a condition of sale.

Packers already demonstrated their intent to demand more information than is necessary for COOL following the USDA's October 2002 issuance of its "*Guidelines for Interim Voluntary Country of Origin Labeling.*"[8] Within just months of these voluntary guidelines, packers began demanding that producers:

1. Provide third-party verification of where livestock was born and raised.

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[3] Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 281(2)(A)(i)(ii). The mandatory COOL law makes no distinction between cooked or raw beef. The only related exclusion within the mandatory COOL law is the exclusion for commodities that are an ingredient in a processed food item (Sec. 281(2)(B). However, the Voluntary COOL Bill includes only ground beef and raw unprocessed muscle cuts of beef (see HR 4576, Food Promotion Act of 2004, 108th Congress, 2nd Session, Sec. 281(a)(2)).

[4] Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 283(c). The Voluntary COOL Bill includes the same penalty at Sec. 285(a)(2).

[5] Establishment of Guidelines for the Interim Voluntary Country of Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946, Federal Register, Vol. 67, No. 198, Friday, October 11, 2002, at 63375.

[6] HR 4576, Food Promotion Act of 2004, Section 281 et al, 108th Congress, 2nd Session. The Bill does not prohibit the use of an animal identification system for purposes of verifying the country of origin of live cattle.

[7] Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 282(f)(1).

[8] Establishment of Guidelines for the Interim Voluntary Country of Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946, Federal Register, Vol. 67, No. 198, Friday, October 11,2002, at 63367 - 63375.

2. Provide a signed legal affidavit with each load of livestock stating there is a third-party verified audit trail in place that identifies where the livestock in each load were born and raised.

3. Provide access to their business records so packers can perform random producer audits, so packers can verify that an accurate audit trail is in place, and so packers can verify that the producer's information is being verified by an acceptable third-party.

4. Indemnify packers from liability.[9]

These demands all were made in response to the USDA's Existing Voluntary Program implemented in October 2002. Because the proposed Voluntary COOL Bill contains the same functional components as USDA's voluntary labeling guidelines, it is more than reasonable to expect that packers will respond similarly to the new Voluntary COOL Bill.

***Fiction**: The Voluntary COOL Bill will result in lower labeling costs for cattle producers, packers, and retailers.*

Truth: Because the Voluntary COOL Bill requires the same "verifiable recordkeeping audit trail" required by the Mandatory COOL Law, the cost of labeling (primarily the cost of recordkeeping) for those who participate in a voluntary labeling program will be the same costs that would be incurred under the Mandatory COOL Law.[10] The only cost variable, therefore, would be based on the level of participation in the voluntary labeling program. It is reasonable to expect there would be far fewer packer participants and retailer participants, hence far fewer products labeled, under a voluntary program.

In addition, it is entirely possible that under a voluntary program packers could require all producers to begin providing origin information as a condition of sale, resulting in all producers incurring whatever cost is associated with providing origin information. But under a voluntary program, the packer is not compelled to label. Thus, packers may be able to extract information from producers without using the information for COOL labeling purposes. Instead, the packer could use this information to supply its own branded product line, without having to pay any premiums to the producer.

***Fiction**: The Voluntary COOL Bill will result in a comprehensive country-of-origin labeling system.*

Truth: The Voluntary COOL Bill is a sham. It is purposely patterned after the "Voluntary

[9] These conditions were set forth in letters IBP sent to producers in January-February 2003; in letters sent to producers by Swift & Company on February 3, 2003; in letters sent by Swift & Company E.A. Miller Inc., Blue Ribbon Beef on February 6, 2003; and in letters to producers sent by San Angelo Packing Company, Inc. on February 6, 2003.

[10] Notice of Request for Emergency Approval of a New Information Collection, Federal Register, Vol. 67, No. 225, at 70205 – 70206. Here USDA categorizes the costs of achieving a verifiable recordkeeping audit trail for producers, packers, and retailers.

Interim COOL Guidelines" USDA issued in October 2002, which were vehemently rejected by the packing and retailing sectors. USDA has not reported any measurable participation in this Existing Voluntary Program. The fact that the Voluntary COOL Bill includes the very penalties that were violently opposed by packers and retailers in the Mandatory COOL Law strongly suggests its authors have no intention of implementing a workable COOL program. The Voluntary COOL Bill was introduced for the express purpose of repealing the producer-friendly Mandatory COOL Law, and to give packers additional authority to demand proprietary information from producers, without requiring packers to use such information for the benefit of either producers or consumers. Instead, packers will use this new authority to access producer information at no cost, which will accelerate the trend toward a vertically integrated U.S. beef industry. Nothing could be more dangerous to the future of independent U.S. cattle producers.