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4

5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 EASTERDAY RANCHES, INC., a  
Washington corporation;  
8 Plaintiff,

9 vs.

10 U.S. DEPARTMENT OF  
AGRICULTURE; ED SHAFER,  
Secretary of the U.S. Department of  
11 Agriculture; AGRICULTURAL  
MARKETING SERVICE, an agency of  
12 the U.S. Department of Agriculture; and  
LLOYD C. DAY, Administrator of the  
13 Agricultural Marketing Service,  
Defendants.

NO.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

14 Plaintiff Easterday Ranches, Inc, by and through its attorney Michael B.  
15 Gillett of The Gillett Law Firm, alleges as follows:

16 NATURE OF THE CASE

17 1. This action is brought under 5 U.S.C. § 702 (Administrative  
18 Procedure Act), challenging the Interim Final Rule promulgated by defendants to  
19 implement country of origin labeling requirements under Subtitle D of the  
20

1 Agricultural Marketing Act (AMA), 7 U.S.C. § 1638, et seq.

2 JURISDICTION AND VENUE

3 2. This Court has subject matter jurisdiction over this action under 28  
4 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1346 (federal  
5 defendant).

6 3. Venue is proper in this district under 28 U.S.C. § 1402 (federal  
7 defendant) because this is the judicial district in which plaintiff Easterday Ranches,  
8 Inc. has its principal place of business and principal office.

9 PARTIES

10 4. Plaintiff Easterday Ranches, Inc. is a privately-held Washington  
11 corporation that owns and operates a cattle feedlot in Franklin County,  
12 Washington. At various times, plaintiff handles cattle born in Canada at its  
13 feedlot. Most or all of the cattle handled at plaintiff's feedlot are slaughtered at  
14 facilities in the United States.

15 5. Defendant U.S. Department of Agriculture is a cabinet department of  
16 the United States Government.

17 6. Defendant Ed Shafer is the Secretary of the U.S. Department of  
18 Agriculture.

19 7. Defendant Agricultural Marketing Service is an agency of the U.S.  
20 Department of Agriculture.

1 8. Defendant Lloyd C. Day is the Administrator of the Agricultural  
2 Marketing Service.

3 STATUTORY BACKGROUND AND RULEMAKING PROCEEDINGS

4 9. In the 2002 and 2008 Farm Bills, Congress added a new subtitle D to  
5 the AMA. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171,  
6 § 10816, 116 Stat. 134, 533-535 (2002), and Food, Conservation, and Energy Act  
7 of 2008, Pub. L. No. 110-246, § 11002, 122 Stat. 1651, 2113-2116 (2008). Among  
8 other things, the new subtitle D generally requires that “a retailer of a covered  
9 commodity shall inform consumers ... of the country of origin of the covered  
10 commodity.” 7 U.S.C. § 1638a(a)(1). A number of meat products, including, but  
11 not limited to, muscle cuts of beef and ground beef, are covered commodities  
12 under the law. 7 U.S.C. § 1638(2)(A).

13 10. On August 1, 2008, the Agricultural Marketing Service of the U.S.  
14 Department of Agriculture caused to be published in the Federal Register an  
15 Interim Final Rule concerning mandatory country of origin labeling of beef, pork,  
16 lamb, chicken, goat meat, perishable agricultural commodities, peanuts, pecans,  
17 ginseng, and macadamia nuts. 73 Fed. Reg. 45,105 – 45,151 (Aug. 1, 2008). The  
18 effective date of the Interim Final Rule is September 30, 2008. 73 Fed. Reg.  
19 45,106 (Aug. 1, 2008).

20 11. Interim Final Rule causes prospective injury to plaintiffs that is real,

1 immediate and direct because it will increase plaintiff's recordkeeping costs,  
2 increase plaintiff's costs of operation, and deter slaughter facilities from  
3 purchasing Canadian-born cattle raised at plaintiff's feedlots, or will, at a  
4 minimum, reduce the price that slaughter facilities will be willing to pay for such  
5 cattle.

6 CLAIM FOR RELIEF

7 12. Plaintiff incorporates by reference and realleges paragraphs 1 through  
8 11 of this Complaint.

9 13. The rulemaking record upon which defendants based promulgation of  
10 the Interim Final Rule includes, but is not limited to, the initial regulatory  
11 flexibility analysis published at 68 Fed. Reg. 61,974 – 61,977 (Oct. 30, 2003) and  
12 the interim final regulatory flexibility analysis published at 73 Fed. Reg. 45,140 –  
13 45,143 (Aug. 1, 2008).

14 14. In promulgating the Interim Final Rule, defendants acted on the  
15 premise that there are no federal rules with which the Interim Final Rule overlaps.  
16 68 Fed. Reg. 61,974 (Oct. 30, 2003) (“USDA has not identified any Federal rules  
17 that would duplicate or overlap with this proposed rule.”) and 73 Fed. Reg. 45,140  
18 (Aug. 1, 2008) (“[T]he Agency has not identified any Federal rules that would  
19 duplicate or overlap with this rule.”).

20 15. Defendants' premise that there are no federal rules with which the

1 Interim Final Rule overlaps is defective insofar as the Interim Final Rule overlaps  
2 with the marking rules promulgated by the Secretary of the Treasury under the  
3 Tariff Act of 1930 and the NAFTA Implementation Act.

4 16. In promulgating the Interim Final Rule, defendants failed to consider,  
5 analyze or evaluate any alternative that would reconcile the rule with the Treasury  
6 marking rules.

7 17. Promulgation of the Interim Final Rule was arbitrary, capricious, an  
8 abuse of discretion, or otherwise not in accordance with law, in that the rulemaking  
9 record is defective because it operates on the mistaken premise (reflected in the  
10 rulemaking record) that the rule does not overlap with any other federal rule and  
11 fails to consider, analyze or evaluate any alternative that would not harmonize the  
12 rule with the Treasury marking rules.

13 **REQUEST FOR RELIEF**

14 **WHEREFORE**, Plaintiff respectfully requests that the Court provide relief  
15 as follows:

16 1. Postpone the effective date of the Interim Final Rule pending the  
17 conclusion of judicial review of the rule.

18 2. Declare that promulgation of the Interim Final Rule was arbitrary,  
19 capricious, an abuse of discretion, or otherwise not in accordance with law, and  
20 vacate and remand the Interim Final Rule, insofar as the rulemaking record is

1 defective because it operates on the mistaken premise (reflected in the rulemaking  
2 record) that the rule does not overlap or conflict with any other federal rule and  
3 fails to consider, analyze and evaluate any alternative that would harmonize the  
4 rule with the Treasury marking rules.

5 3. Award such other relief as to the Court appears reasonable and just.

6 DATED this 22<sup>nd</sup> day of September 2008.

7 s/ Michael B. Gillett  
8 Michael B. Gillett, WSBA # 11038  
9 Attorney for Plaintiff Easterday  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Easterday Ranches, Inc.

(b) County of Residence of First Listed Plaintiff Franklin (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael B. Gillett, The Gillett Law Firm, 6327 Ravenna Ave., N.E., Seattle, WA 98115-7027 (206) 706-4692

DEFENDANTS

U.S. Dept of Agriculture, Ed Shafer, Agricultural Marketing Service, Lloyd C. Day

County of Residence of First Listed Defendant District of Columbia (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

U.S. Attorney, Attorney General

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location options.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district, 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 USC 702

Brief description of cause: Challenge to federal rulemaking as arbitrary and capricious

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE: 09/22/2008 SIGNATURE OF ATTORNEY OF RECORD: s/ Michael B. Gillett, Michael B. Gillett WSBA # 11038

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.