

Industry Insight: Mississippi Reverses Course on Plant-Based Meat Alternative Labeling

As we [reported](#) in July 2019, many states have enacted laws related to the labeling of meat alternative products and limiting their use of meat-like descriptors like burgers or hot dogs. One such law recently took effect in Mississippi. Mississippi's law, [S.B. 2922](#), provided that a plant-based, insect-based, or cell-cultured food product "shall not be labeled as meat or a meat food product" and even imposed potential criminal sanctions for doing so. Just a few weeks after it went into effect, the state has promulgated draft regulations that appear to create a substantial carve-out for plant-based foods. The draft regulations are notable for what is included and omitted from this significant carve out. **The Lawsuit** According to [media reports](#), a lawsuit filed the day Mississippi's law went into effect prompted the state to draw up its draft regulation. In that suit, a manufacturer of plant-based foods and a trade association for plant-based foods argued that S.B. 2922's provisions unconstitutionally infringed on the ability of manufacturers to engage in non-misleading speech. Among other things, plaintiffs claimed that reasonable consumers were not misled by the use of labels like "veggie burgers," "vegan bacon," or other similar descriptions. Further, plaintiffs asserted that such descriptions delivered useful and actionable information to consumers regarding how the foods at issue should be prepared and eaten. **The Carve-Out for Plant-Based Foods and Its Implication** The [draft regulation](#) provides that:

a plant-based food product will not be considered to be labeled as a "meat" or "meat food product" if one or more of the following terms, or a comparable qualifier, is prominently displayed on the front of the package: "meat free," "meatless," "plant-based," "veggie-based," "made from plants," "vegetarian," or "vegan."

Accordingly, any plant-based food product labeled with such a qualifier is not "labeled as meat" as to violate Mississippi law. Put another way, it would be [legal](#) to sell appropriately-labeled "veggie burgers" as "burgers" in the state under this draft regulation. Further, the draft regulations permit, but do not require, food establishments and retailers to separate plant-based food products from their meat-based food product offerings. Pursuant to the draft regulations, food establishments and retailers must ensure that any plant-based foods they offer comply with the qualifiers set out above and are not "false or misleading." These are listed as "safe harbor actions" under the draft regulations. **The Draft Regulation's Important Omission** Notably, the draft regulations apply only to *plant-based* foods. Mississippi's law applies to two other types of meat alternative products: insect-based foods and cell-cultured meat alternative products. Cell-cultured meat is cultivated from cells drawn from live animals and grown in a laboratory setting, and these products are not yet commercially available. In Missouri, state officials issued [guidance](#) about that state's meat alternative labeling law and noted that the "risk of misrepresentation likely will be greater in lab-created products," as they are "are expected to have more similarity to products derived from harvested production livestock or poultry than plant-based products." Mississippi's draft regulations *do not* apply to cell-cultured meat products. This suggests that the state will treat cell-cultured and insect-based proteins differently than plant-based meat alternatives. **Conclusion** Mississippi's draft regulations, if enacted in about a month, and the state's governing law will be tested as a growing number of meat alternative products enter the marketplace in the coming years. We will continue to track the development of state meat alternative labeling laws and how they affect the food and beverage industry.

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