

Meat Wars: The Unsettled Intersection of Federal and State Food Labeling Regulations for Plant-Based Meat Alternatives

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Meat Wars: The Unsettled Intersection of Federal and State Food Labeling Regulations for Plant-Based Meat Alternatives

Shareefah Taylor

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ABSTRACT

Due to technological advances and the rise in popularity of plant-based meat alternatives (i.e., Beyond Meat, the Impossible Burger, etc.), nearly thirty states have proposed or enacted legislation to limit which foods can be labeled with terms that have traditionally been used to describe products derived from animal carcasses (i.e., meat, burger, sausage, etc.). Fueled in many places by the cattle industry, the states' legislation proposes stricter guidelines than the federal counterparts in an attempt to specifically prohibit plant-based, cell-based (lab-grown meat), and even insect-based products from being labeled in meat-associated terms. To date, lawsuits have been filed by opponents to the enacted laws in three states (Missouri, Arkansas, and Mississippi), challenging the laws as unconstitutional on First and Fourteenth Amendment grounds. All lawsuits are currently pending at the time of this writing.

This Note will use the recent litigation regarding the “dairy wars” (i.e., lawsuits regarding laws that limit almond/soy/non-dairy beverages use of the term “milk”) as a parallel comparison to the “meat wars,” and proposes a potential resolution to the labeling of plant-based meat alternatives dispute that allows those products to continue using meat-related terms by amending federal guidelines.

AUTHOR'S NOTE

B.S., Haverford College; J.D. Candidate, 2021, University of Massachusetts School of Law. This article is for those with a personal affinity for food—an affinity which led me to write this piece—and to continue furthering the conversation about our food system. Thank you to my family and friends who have supported me throughout my journey. Thank you to Professor McCuskey for her helpful dialogue with this project. Lastly, a special thanks to the tireless editors of the *UMass Law Review*.

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I. IT'S "PATTY" TIME

Imagine yourself in a neighborhood grocery store. While walking through the aisles you come across the meat section, filled with various beef, poultry, and pork items. As you reach for a pack of beef burgers your eyes catch a nearby package branded "plant-based burgers." Unlike traditional veggie burgers, these are located in the meat section instead of a separate vegetarian display. In an adventurous mood, you pick up the "plant-based burgers" instead of the beef burgers and head to the checkout counter, excited to try this new food item.

The above scenario is occurring in supermarkets across the country as technological advances¹ and the demand for meat alternatives create an emerging market for food products that expand the traditional labeling paradigms the country has used for decades.² This evolution has amplified the discord between federal labeling regulations as defined and labeling regulations as permitted in practice. Fueled by pressure from agricultural meat producers, an ever-growing number of states have proposed laws to clarify what food items can and cannot be labeled "meat," with a majority of the proposed laws using a strict meaning of the term and excluding "plant-based" products from being labeled with meat terminology.³

To resolve this issue, the organization responsible for labeling plant-based food products, the Food and Drug Administration ("FDA") of the United States Department of Health and Human

¹ Alan Greenblatt, *Where's the Beef? States Ban Veggie Burgers from Being Labeled 'Meat,'* GOVERNING (June 2019), <https://www.governing.com/topics/health-human-services/gov-meat-labeling-laws.html> [<https://perma.cc/WE5T-N8M3>].

² Jenny G. Zhang, *Proposed Bill Wants All Plant-Based Beef Labeled 'Imitation,'* EATER (Oct. 30, 2019, 11:10 AM), <https://www.eater.com/2019/10/30/20939961/real-meat-act-beef-labeling-proposed-bill-congress-impossible-burger-beyond-meat> [<https://perma.cc/VQ5G-8V4W>]. "With the rising mainstream popularity of plant-based 'meat' products from companies like Impossible Foods and Beyond Meat, the battle over what is allowed to be called meat has escalated, with several lawsuits this summer challenging state laws that ban plant-based and cell-cultured [lab-grown] meat producers from using the word 'meat,' 'beef,' 'chicken,' and 'sausages.'" *Id.*

³ Laura Reiley, *Veggie Burgers Were Living an Idyllic Little Existence. Then They Got Caught in a War over the Future of Meat.*, WASH. POST (Aug. 25, 2019, 2:35 PM), <https://www.washingtonpost.com/business/2019/08/25/veggie-burgers-were-living-an-idyllic-little-existence-then-they-got-caught-war-over-future-meat/> [<https://perma.cc/QLH3-PVVG>].

Services, should address the matter on a federal level by creating a new category for plant-based meat alternatives in the agency's food definitions in order to allow those products to continue using the term "meat." Although the word meat is used to describe a product that does not contain material derived from an animal carcass, the term is used to accurately reflect the non-misleading, common-use nomenclature of the product.

Part II of this Note discusses the background and context for the federal regulatory agencies responsible for labeling, defining, and advertising food products. It will first examine the FDA, the agency that is responsible for, among other duties, the regulation of fruit and vegetable products. Then it will move to a brief background on the United States Department of Agriculture ("USDA"), which is responsible for defining and regulating meat and meat products. Part II concludes with a brief background on the regulations of another agency, the Federal Trade Commission ("FTC"), which controls food marketing and advertising.

Part III discusses the overall themes found within the proposed and enacted state labeling laws and then segues into the specific legal challenges to state laws that are currently pending in courts. As a parallel comparison, the precedent for state litigation regarding "dairy wars" (i.e., lawsuits regarding laws that limit almond/soy/non-dairy beverages use of the term "milk") will be analyzed.

Part IV offers suggestions for why state laws would be inadequate to address the labeling issue cohesively and why a federal law is a more appropriate remedy. A proposed solution will be discussed that expands the word "meat" to include "plant-based meat alternatives" as that term is an accurate description of the food products.

II. THE U.S. GOVERNMENT "COOKS UP" FEDERAL REGULATORY AGENCIES

A. Food and Drug Administration

Developed as an institution under the USDA, the FDA evolved across various divisions over time until 1930, at which time it was transferred from the USDA to what eventually became the Department of Health and Human Services.⁴ Although product advertising falls

⁴ PETER BARTON HUTT ET AL., *FOOD AND DRUG LAW: CASES AND MATERIALS* 4 (4th ed. 2014).

within the jurisdiction of the FTC,⁵ the FDA is tasked with “assur[ing] that the products it regulates are safe and truthfully labeled.”⁶ Plant-based “meat” labels fall within the FDA’s jurisdiction under the federal Food, Drug, and Cosmetic Act (“FD&C Act”) of 1938.⁷ The FD&C Act “provides the basic legal framework controlling the activities of producers of food, drugs, cosmetics, medical devices, and tobacco products,”⁸ prohibits the false advertising of foods, and requires “[d]efinitely informative labeling.”⁹ Even though Congress has authorized civil penalties for some violations of the FD&C Act, the FDA has traditionally utilized informal remedies “such as publicity, recalls, and warning letters” as its enforcement tools.¹⁰

B. United States Department of Agriculture

While the FDA is a significant federal agency, it is just one of numerous federal agencies responsible for regulating various aspects of the food supply.¹¹ Meat, poultry, and unshelled egg products are primarily regulated by the USDA, but the bureau shares a complex relationship with the FDA as the agencies’ jurisdictions trade off at certain stages in food processing and overlap in some categories.¹² Product labels for livestock and poultry species are all within the USDA’s jurisdiction under the Federal Meat Inspection Act and the Poultry Products Inspection Act.¹³ As such, even though plant-based “meat” alternatives utilize the term “meat,” the USDA does not have the authority to regulate these plant-based products as they do not contain meat or poultry.¹⁴

⁵ *Id.* at 11.

⁶ *Id.* at 4.

⁷ Complaint at 5, *Turtle Island Foods, SPC v. Soman*, No. 4:19-cv-514-KGB (E.D. Ark. July 22, 2019).

⁸ HUTT ET AL., *supra* note 4, at 5.

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 317.

¹² *Id.* at 318. The USDA was created by Congress in 1862. *Id.* at 3.

¹³ *Id.* at 318.

¹⁴ *See id.*

C. Federal Trade Commission

Created in 1914, the FTC enforces consumer-protection laws to ensure that products are described truthfully and that consumers understand what they are buying.¹⁵

FTC has concurrent jurisdiction with FDA; FTC regulates the marketing and advertising of food products, enforces consumer-protection laws to ensure that products—including food products like plant-based meats—are described truthfully and consumers understand what they are paying for, and allows packaging labels as long as they are accurate and not misleading.¹⁶

This means that, while the FDA has authority over the labels of plant-based food products, “[t]he FTC has exclusive authority over the advertising of [the] food” and might influence the FDA’s regulation of the products.¹⁷

D. Definitions

The United States Code (“the Code”) and Code of Federal Regulations (“C.F.R.”) provide relevant definitions to understand the basis for allegations claiming that plant-based “meat” alternative products are mislabeled. In the Code, the term “food” is defined as articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.¹⁸ Further, “meat food product” is defined as any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats.¹⁹ The USDA’s definition of meat within the C.F.R. is: “[t]he part of the muscle of any cattle, sheep, swine, or goats.”²⁰ Additionally, a false or misleading label is deemed misbranded if “[the label] is false or misleading in any

¹⁵ 15 U.S.C. § 45(a)(1) (2006) (prohibiting “unfair or deceptive acts or practices in or affecting commerce”); *Our History*, FED. TRADE COMMISSION, <https://www.ftc.gov/about-ftc/our-history> [<https://perma.cc/RD6F-T4W6>].

¹⁶ Complaint at 10, *Turtle Island Foods, SPC v. Richardson*, No. 18-cv-4173 (W.D. Mo. Aug. 27, 2018).

¹⁷ HUTT ET AL., *supra* note 4, at 151.

¹⁸ 21 U.S.C. § 321(f) (2016) (FD&C Act definition of food).

¹⁹ 21 U.S.C. § 601(j) (2014) (U.S. Code definition for meat food product under Title 21 Food and Drugs).

²⁰ 9 C.F.R. § 301.2 (2019) (C.F.R. definition for meat and meat food product from USDA Federal Meat Inspection Act).

particular”²¹ Though these definitions do not include exceptions for plant-based alternatives, the FDA has not enforced its labeling regulations prohibiting plant-based products from using the word “meat.”²² The FDA’s lack of enforcement has led states, backed by the cattle industry, to create laws aimed at limiting the use of meat-related terms on plant-based food labels.²³

III. STATES “SINK THEIR TEETH” INTO LEGISLATION FOR PLANT-BASED MEAT ALTERNATIVES

A. States’ Proposed and Enacted Laws

In addition to federal labeling regulations, states have also developed laws controlling food labeling requirements that are valid unless preempted by federal laws.²⁴ Despite existing federal and state laws that “prohibit[] misrepresentation of food products,” many states have either proposed or enacted new regulations to further define and limit which food products can lawfully be labeled with the word “meat.”²⁵ To date, almost thirty states have introduced bills to limit the terminology that can be used to label plant-based and/or cell-based products.²⁶ Missouri became the first state to pass legislation confining

²¹ 21 U.S.C. § 343(a) (2010).

²² Aliza Abarbanel, *As Plant-Based Meat and Dairy Picks Up Speed, a Labeling Fight Heads to Court*, BON APPETIT: HEALTHYISH (Sept. 4, 2019), <https://www.bonappetit.com/story/plant-based-labeling> [<https://perma.cc/4PZ5-ZK92>].

²³ *Id.*

²⁴ *Food Labeling – An Overview*, NAT’L AGRIC. L. CTR., <https://nationalaglawcenter.org/overview/food-labeling/> [<https://perma.cc/EXK2-F9QL>].

²⁵ Lauren Handel, *New State Laws Restrict “Meat” Labeling for Cell-Cultured and Plant-Based Products*, HANDEL FOOD L. (June 21, 2019), <https://www.handelfoodlaw.com/labeling/new-state-laws-restrict-meat-labeling-for-cell-cultured-and-plant-based-products/> [<https://perma.cc/4TV8-QLAS>].

²⁶ Reiley, *supra* note 3. See also BRIANNA CAMERON & SHANNON O’NEILL, STATE OF THE INDUSTRY REPORT: CELL-BASED MEAT 18 (2019), <https://www.gfi.org/non-cms-pages/splash-sites/soi-reports/files/SOI-Report-Cell-Based.pdf> [<https://perma.cc/R258-7QHE>]. Cell-based meat, also known as clean meat or cultured meat, is actual animal meat that is taken from a sample of live animal tissue and grown in a nutrient-rich environment. *Id.* at 2; Elaine Watson, *Plant-Based and Cell-Cultured ‘Meat’ Labeling Under Attack in 25 States*, FOODNAVIGATOR-USA (May 29, 2019), <https://www.foodnavigator-usa.com/Article/2019/05/29/Plant-based-and-cell-cultured-meat-labeling-under-attack-in-25-states> [<https://perma.cc/44AM-NUNM>] (last updated July 29, 2019, 8:34 AM). “Bills have been introduced in Arizona, Kentucky, Mississippi, Montana, North Dakota, Oklahoma, South Carolina, South Dakota, Wyoming,

the word “meat” to labels that exclude plant-based and cell-based products in 2018.²⁷ As of July 2019, “11 other states—Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Montana, North Dakota, Oklahoma, South Dakota, South Carolina and Wyoming—passed laws to regulate labeling. An additional 18 states introduced bills that didn’t pass.”²⁸ Of the twelve states that have passed legislation, the laws in Alabama, Kentucky, and South Carolina specifically target cell-based products and will therefore not be discussed further.²⁹

Relatedly, two other states have amended their laws to focus on cell-cultured products but, if read broadly, the laws could be applied to plant-based meat alternatives. Montana’s law specifies that “meat” is the “edible flesh of livestock or poultry and includes livestock and poultry products. This term does not include cell-cultured edible products”³⁰ The misbranded provision has been updated and includes a new section that reads “[m]isbranded’ means the term applied to meat . . . if it is not entirely derived from the edible flesh of livestock or poultry or livestock and poultry products . . . [cell-cultured products not misbranded if labeled according to set specifications].”³¹ Although Montana’s definition states that meat is flesh derived from livestock or poultry, and the misbranding provision states that meat is misrepresented if it is not derived from livestock or poultry,

Alabama, Arkansas, Louisiana, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Washington D.C., Nebraska, New Mexico, Texas, Tennessee, and Virginia. Several are dead or dormant, while some have passed both houses.” *Id.*

²⁷ Christina Troitino, *Missouri Becomes First State to Start Regulating Meat Alternative Labels*, FORBES (Aug. 31, 2018, 4:30 AM), <https://www.forbes.com/sites/christinatroitino/2018/08/31/missouri-now-regulating-meat-alternative-labels-as-regulatory-war-gets-bloody/#6f50143c6886> [https://perma.cc/6963-JTV5].

²⁸ Madeleine Turner, *What’s in a Name? Legislatures Labor over Lab Meat Label*, ENVTL. HEALTH NEWS (July 1, 2019), <https://www.ehn.org/whats-in-a-name-legislatures-labor-over-lab-meat-label-2638969335.html> [https://perma.cc/YQV4-22QT].

²⁹ See H.B. 518, 2019 Reg. Sess. (Ala. 2019) (providing that lab-grown meat may not be labeled for sale as “meat” or “meat product”); H.B. 311, 2019 Reg. Sess. (Ky. 2019) (“An Act relating to cultured animal tissue”); H.B. 4245, 123rd Gen. Assemb., Reg. Sess. (S.C. 2019) (relating to cell-cultured meat, “[the] provision does not apply to plant-based meat substitutes”).

³⁰ H.B. 0327, 2019 Leg., 66th Sess. (Mont. 2019) (codified as MONT. CODE ANN. § 81-9-217(7) (2019)).

³¹ MONT. CODE ANN. § 81-9-217(8)(c) (2019).

proponents of the law have stated that “the bill does not focus on vegetarian meat alternatives, such as Gardenburger veggie burgers or Beyond Meat plant-based meat substitutes.”³² Similarly, North Dakota’s law has been updated to state that “meat” is “the edible flesh of an animal born and harvested for the purpose of human consumption,” and the misbranding provision is narrower than Montana’s in that it prohibits “the misrepresentation of cell-cultured protein.”³³ While plant-based meat alternatives do not meet North Dakota’s definition of meat, neither the existing law nor the new amendment have an explicit misbranding provision that states meat is misrepresented if it is not derived from animal flesh harvested for human consumption.³⁴ Indeed, proponents of the new meat labeling bill “will be moving forward . . . to address the appropriate labeling of plant-based protein products that mimic beef, an issue that was not covered under the labeling legislation that is now North Dakota law.”³⁵ But, if North Dakota’s future proposed law mimics the misbranding language used in Montana’s new law—specifically applying to meat—then plant-based meat alternatives could possibly be deemed misrepresented.

South Dakota’s recent bill forecloses any misunderstanding that a product containing non-animal material can be labeled as meat. The state’s definition of meat is “the edible part of the muscle of cattle, bison, sheep, swine, goats . . . [less common animals and details about the animal body parts].”³⁶ To complement this definition, earlier this year the state enacted an amendment to the misbranded foods section that states “[a] food product shall be deemed to be misbranded if the

³² Greg Henderson, *Montana’s Real Meat Act*, DROVERS (Apr. 1, 2019, 11:36 AM), <https://www.drovers.com/article/montanas-real-meat-act> [<https://perma.cc/7XYV-PM43>].

³³ H.B. 1400, 66th Leg. Assemb., Reg. Sess. (N.D. 2019) (codified as N.D. CENT. CODE §§ 4.1-31-01(8), 4.1-31-05.1 (West 2019)); Carolyn Orr, *North Dakota, South Dakota Laws Reflect Broader Policy Trend on Labeling of ‘Meat Substitutes,’* COUNCIL ST. GOVERNMENTS: CAROLYN ORR’S BLOG (Apr. 15, 2019, 5:44 PM), <https://knowledgecenter.csg.org/kc/content/north-dakota-south-dakota-laws-reflect-broader-policy-trend-labeling-meat-substitutes> [<https://perma.cc/N2GX-2WA8>].

³⁴ See N.D. CENT. CODE § 19-02.1-10 (West 2019) (misbranding of food defined).

³⁵ Independent Beef Association of North Dakota, *North Dakota Governor Signs Meat Labeling Bill*, TRI-STATE LIVESTOCK NEWS (Apr. 3, 2019), <https://www.tsln.com/news/north-dakota-governor-signs-meat-labeling-bill/> [<https://perma.cc/NC6N-Y3ZL>].

³⁶ S.D. CODIFIED LAWS § 39-5-6(13) (2019).

product is labeled or branded in a false, deceptive, or misleading manner that intentionally misrepresents the product as a meat food product . . . a meat by-product . . . or as poultry.”³⁷ The label must be “intentionally misrepresent[ed]” for a violation to occur.³⁸ Similarly, Wyoming’s recently approved bill incorporated the state’s existing description of “meat,” defined as “the edible part of the muscle of animals,” and used it as a gauge to prohibit use of the word in certain circumstances.³⁹ The recently enacted statute prohibits use of the “term ‘meat’ or any synonymous term for meat or a specific animal species in labeling, advertising or other sales promotion unless the product . . . is consistent with the definition of meat . . . and is derived from harvested livestock, poultry, wildlife or exotic livestock”⁴⁰ The statute then requires that “plant based products not consistent with the definition of meat . . . and not derived from harvested livestock, poultry, wildlife or exotic livestock . . . shall . . . clearly label plant based products as ‘vegetarian’, ‘veggie’, ‘vegan’, ‘plant based’ or other similar term indicating that the product is plant based.”⁴¹ Thus, products not fitting within the state’s definition of meat would not be able to legally use the term on the label, and the statute explicitly states that plant-based products must be labeled designating it as such.

Two states have enacted legislation that prohibits products from being labeled as meat if they are not derived from animal material but, unlike the previous bills, allow caveats for use of the term if there is a clear label stating what material the product contains. Missouri’s recent bill amended the state’s Meat Advertising Law to outlaw “misrepresenting a product as meat that is not derived from harvested production livestock or poultry.”⁴² Shortly thereafter, the state’s Department of Agriculture issued guidelines that a product will not be considered misrepresented if the label contains a “[p]rominent statement on the front of the package, immediately before or

³⁷ S.B. 68, 2019 Leg. Assemb., 94th Sess. (S.D. 2019) (codified as S.D. CODIFIED LAWS § 39-4-26 (2019)).

³⁸ Handel, *supra* note 25.

³⁹ Act No. 48, 65th Leg., Gen. Sess. (Wyo. 2019) (codified as WYO. STAT. ANN. § 35-7-119(e)(iii)(A) (West 2019)).

⁴⁰ WYO. STAT. ANN. § 35-7-111(a)(xiii) (West 2019).

⁴¹ WYO. STAT. ANN. §§ 35-7-119(e)(ii) (West 2019).

⁴² Memorandum from the Mo. Dep’t of Agric. on Mo.’s Meat Advert. Law to Meat Inspection Program 1 (Aug. 30, 2018), <https://agriculture.mo.gov/animals/pdf/missouri-meat-advertising-guidance.pdf> [<https://perma.cc/FT6Q-AP86>] [hereinafter Mo. Memorandum].

immediately after the product name, that the product is ‘plant-based,’ ‘veggie,’ . . . or a comparable qualifier; and [a] [p]rominent statement on the package that the product is ‘made from plants,’ . . . or a comparable disclosure.”⁴³ Likewise, Oklahoma’s recently enacted statute defines “meat” as “any edible portion of livestock, poultry or captive cervid⁴⁴ carcass or part thereof,”⁴⁵ and states “[n]o person advertising, offering for sale or selling all or part of a carcass or food plan shall engage in any misleading or deceptive practices”⁴⁶ The statute goes on to state that “provided product packaging for plant-based items shall not be considered to be in violation of the provisions [misrepresented as being derived from harvested livestock] . . . so long as the packaging displays that the product is derived from plant-based sources.”⁴⁷

A handful of states have enacted legislation containing more restrictive language that unambiguously expresses that plant-based products are not meat. Arkansas’s recently approved regulation defines “meat” as “a portion of a livestock, poultry, or cervid carcass that is edible by humans.”⁴⁸ It further states that “[m]eat’ does not include: a synthetic product derived from a plant, insect, or other source,”⁴⁹ and includes an “extremely vague prohibition against ‘utilizing a term that is the same as or similar to a term that has been used or defined historically in reference to a specific agricultural product.’”⁵⁰ Another state, Louisiana, explicitly excludes plant-based products from the definition of meat and provides a thorough list of what constitutes meat in an amendment. “Meat” is defined as “a portion of a beef, pork, poultry, alligator, farm-raised deer, turtle, domestic rabbit, crawfish, or shrimp carcass that is edible by humans but does not include a:

⁴³ *Id.* at 2.

⁴⁴ A cervid is an animal in the deer family. Beth Mole, *Arkansas’ Ban on Veggie-Meat Labels Is Total Bologna, Says Tofurky*, ARS TECHNICA (July 24, 2019, 3:16 PM), <https://arstechnica.com/science/2019/07/tofurky-has-legal-beef-over-arkansas-ban-on-calling-veggie-meat-meat/> [<https://perma.cc/TSS4-25H8>].

⁴⁵ S.B. 392, 2019 Reg. Sess. (Okla. 2019) (codified as OKLA. STAT. tit. 63 § 316(5) (2019)).

⁴⁶ OKLA. STAT. tit. 63 § 317 (2019).

⁴⁷ *Id.* at § 317(7).

⁴⁸ H.B. 1407, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019) (codified as ARK. CODE ANN. § 2-1-302(7)(A) (West 2019)).

⁴⁹ ARK. CODE ANN. § 2-1-302(7)(B)(i) (West 2019).

⁵⁰ Handel, *supra* note 25; *see also* ARK. CODE ANN. § 2-1-305(10) (West 2019).

[s]ynthetic product derived from a plant, insect, or other source.”⁵¹ In text verbatim to the Arkansas legislation, Louisiana’s statute includes a prohibition against “[u]tilizing a term that is the same as or deceptively similar to a term that has been used or defined historically in reference to a specific agricultural product,”⁵² and also includes a prohibition against “[r]epresenting a food product as meat or a meat product when the food product is not derived from [the animals listed in the LA meat definition above].”⁵³ Even more concise, Mississippi approved a bill that states “[a] plant-based or insect-based food product shall not be labeled as meat or a meat food product.”⁵⁴ Under this law, a product will be deemed mislabeled even if the label also states that the product is “plant-based” or “vegan.”⁵⁵

Generally, proponents of laws preventing plant-based products from bearing labels associated with meat contend that such laws protect consumers from being misled, as shoppers could mistakenly purchase a plant-based product when they intended to buy a product derived from an animal carcass because of confusion caused by the labeling.⁵⁶ Since farmers and producers of beef, poultry, pork, and lamb have been pushing to protect meat terminology in the wake of the trend of companies developing plant-based products that mimic the look and taste of meat,⁵⁷ opponents of stricter labeling regulations argue that, because there is no evidence of consumer confusion caused by plant-based product labels,⁵⁸ the laws are intended to advantage

⁵¹ S.B. 152, 2019 Reg. Sess. (La. 2019) (codified as LA. STAT. ANN. § 3:4743(10) (2020)).

⁵² LA. STAT. ANN. § 3:4744(B)(9) (2020).

⁵³ *Id.* at § 3:4744(B)(4).

⁵⁴ S.B. 2922, 2019 Leg., Reg. Sess. (Miss. 2019) (codified as MISS. CODE ANN. § 75-35-15(4) (West 2019)).

⁵⁵ Deena Shanker & Lydia Mulvany, *Vegan ‘Meat’ Makers Sue Mississippi over What to Call It*, BLOOMBERG (July 2, 2019, 9:36 AM), <https://www.bloomberg.com/news/articles/2019-07-02/vegan-meat-makers-sue-mississippi-over-what-to-call-it> [<https://perma.cc/R7C5-QW2U>].

⁵⁶ Alina Selyukh, *What Gets To Be a ‘Burger’? States Restrict Labels on Plant-Based Meat*, NPR (July 23, 2019, 3:57 PM), <https://www.npr.org/sections/thesalt/2019/07/23/744083270/what-gets-to-be-a-burger-states-restrict-labels-on-plant-based-meat> [<https://perma.cc/E4XM-G6L2>].

⁵⁷ Emily Wagster Pettus, *Plant-Based Food Makers Sue Mississippi over Meat Labeling Law*, INS. J. (July 11, 2019), <https://www.insurancejournal.com/news/southeast/2019/07/11/531788.htm> [<https://perma.cc/6GFT-7NU2>].

⁵⁸ Kelsey Piper, *Mississippi Is Forbidding Grocery Stores from Calling Veggie Burgers “Veggie Burgers,”* VOX (July 3, 2019, 4:00 PM),

animal-based manufacturers and disadvantage plant-based manufacturers, rather than to protect consumers.⁵⁹ Opponents of the laws also see the regulations as an unconstitutional censor on the plant-based food companies' commercial free speech.⁶⁰ Others maintain that businesses often rely on figurative language to describe and sell their products (i.e., peanut butter)⁶¹ and use familiar terminology so consumers can recognize what items they are purchasing; thus, plant-based meat alternatives should be able to do the same.⁶²

B. Specific Legal Challenges

As of October 2019, lawsuits have been filed against officials in three states—Missouri, Mississippi, and Arkansas—challenging the validity of the enacted legislations' attempt to limit which products can be labeled as “meat.”⁶³

1. Missouri

In August of 2018, the first lawsuit challenging a state's new “meat” label law was filed in the U.S. District Court for the Western District of Missouri against Missouri's prosecuting attorney (as a representative of the class of prosecuting attorneys who would be enforcing the criminal liability associated with violations of Missouri's

<https://www.vox.com/future-perfect/2019/7/3/20680731/mississippi-veggie-burgers-illegal-meatless-meat> [<https://perma.cc/WL88-AEHZ>].

⁵⁹ Selyukh, *supra* note 56. In fact, some farmers and legislators have said they want to protect the traditional animal agriculture industry from protein alternatives. See also Dan Flynn, *Nebraska Bill Would Ban 'Meat' Labels on Lab-Grown, Insect and Plant 'Products,'* FOOD SAFETY NEWS (Jan. 25, 2019), <https://www.foodsafetynews.com/2019/01/nebraska-bill-would-ban-meat-labels-on-lab-grown-insect-and-plant-products/> [<https://perma.cc/K3WQ-4YDA>].

⁶⁰ Ed Maixner, *Alternative Protein Labeling Battle Hits States,* AGRI-PULSE (Apr. 3, 2019, 6:40 AM), <https://www.agri-pulse.com/articles/12053-alternative-protein-labeling-battle-hits-states> [<https://perma.cc/3K4J-42VV>].

⁶¹ Mole, *supra* note 44.

⁶² Abarbanel, *supra* note 22.

⁶³ See Complaint, *Soman*, *supra* note 7; Complaint, *Upton's Naturals Co. v. Bryant*, No. 3:19-cv-462-HTW-LRA (S.D. Miss. July 1, 2019); Complaint, *Richardson*, *supra* note 16.

labeling bill).⁶⁴ Plaintiffs, Turtle Island Foods, doing business as The Tofurky Company (a producer and seller of plant-based food products), and The Good Food Institute (a non-profit advocating for clean meat and plant-based meat alternatives) brought a complaint seeking a preliminary and permanent injunction to prevent enforcement of the law, a declaration that the statute was unconstitutional, and compensation for attorney's fees and costs.⁶⁵ Missouri's amended labeling law required that a product must come from "any edible portion of livestock, poultry, or captive cervid carcass or part thereof" to be labeled as "meat," and any plant-based products must contain a qualifier (such as "plant-based" or "veggie") to not be deemed misleading.⁶⁶ Plaintiffs alleged that the law violated the Free Speech Clause of the First Amendment, the dormant Commerce Clause, and the Due Process Clause of the Fourteenth Amendment as "[t]he Statute is a content-based, overbroad, and vague criminal law that prevents the sharing of truthful information and impedes competition by plant-based and clean-meat companies in the marketplace. The Statute does nothing to protect the public from potentially misleading information."⁶⁷ Tofurky claimed that it feared prosecution under the statute.⁶⁸ The State of Missouri contended that "the statute does not oppose plant-based manufacturers using the term 'meat,' but rather has the 'common sense understanding' that prohibits the 'misrepresentation' of a plant-based product as meat. Using 'veggie' or 'plant-based' modifiers . . . prevents such a misunderstanding."⁶⁹

⁶⁴ Complaint, *Richardson*, *supra* note 16, at 1, 3. The bill imposed a penalty of incarceration up to one year and a fine of up to \$1,000 for any violations. *Id.* at 1.

⁶⁵ *Id.* at 1, 21. The American Civil Liberties Union of Missouri and the Animal Legal Defense Fund were also part of the plaintiffs' coalition to bring the lawsuit. Matt Ball, *GFI Goes to Court for First Amendment*, GOOD FOOD INST. (Aug. 27, 2018), <https://www.gfi.org/gfi-goes-to-court-for-first-amendment> [<https://perma.cc/TQ85-EJ8A>].

⁶⁶ Michelle C. Pardo, *Court Rejects Tofurky's Request for Preliminary Injunction to Halt Enforcement of Missouri's Meat Advertising Law*, DUANE MORRIS: ANIMAL L. DEV.: BLOG (Oct. 8, 2019), <https://blogs.duanemorris.com/animallawdevelopments/2019/10/08/court-rejects-tofurkys-request-for-preliminary-injunction-to-halt-enforcement-of-missouris-meat-advertising-law/> [<https://perma.cc/M4H9-S7N3>].

⁶⁷ Complaint, *Richardson*, *supra* note 16, at 1–2.

⁶⁸ *Id.* at 14; Pardo, *supra* note 66.

⁶⁹ Pardo, *supra* note 66.

On September 30, 2019, the court determined that, although the statute allows use of the word “meat” for only edible livestock, Missouri’s Department of Agriculture issued guidance that companies could use modifiers/qualifiers on product labels (i.e., “plant based,” “veggie,” etc.) and not be deemed misleading, and therefore be in compliance with the law.⁷⁰ As Tofurky’s product labels already contained such qualifiers, the court “found no credible risk of prosecution to Tofurky [either for violating the statute or needing to change their labels as the statute does not prohibit their speech]” and denied the preliminary injunction to prevent enforcement of the law.⁷¹ The court also found that the “injunction would ‘invade [Missouri’s] sovereign authority to enact and enforce its own laws.’”⁷² Plaintiffs have appealed the denial of the preliminary injunction and, as of October 2019, the case is pending as to the remaining claims.⁷³

2. Mississippi

The next lawsuit to challenge a state’s “meat” labeling law was filed on July 1, 2019, in the U.S. District Court for the Southern District of Mississippi against Mississippi’s Governor and Mississippi’s Commissioner of Agriculture and Commerce.⁷⁴ Plaintiffs, Upton’s Naturals Co. (a corporation selling vegan food products) and Plant Based Foods Association (a national association of plant-based food manufacturers, suppliers, restaurants, and distributors), brought a complaint seeking a declaratory judgment that Mississippi’s new labeling law was unconstitutional, preliminary and permanent injunctive relief to prevent enforcement of the law, nominal damages for \$1, and compensation for attorney’s fees and costs.⁷⁵ Mississippi’s newly enacted statute stated “[a] plant-based or insect-based food product shall not be labeled as meat or a meat food product.”⁷⁶ Violations of the law imposed imprisonment for up to one year, a fine of up to \$1,000, or both.⁷⁷ Plaintiffs alleged that the

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Turtle Island Foods v. Richardson*, No. 2:18-CV-04173, 2019 U.S. Dist. LEXIS 224840, at *22 (W.D. Mo. Sept. 30, 2019); Pardo, *supra* note 66.

⁷³ Pardo, *supra* note 66.

⁷⁴ Complaint, *Upton’s Naturals Co.*, *supra* note 63.

⁷⁵ *Id.* at 16–19.

⁷⁶ MISS. CODE ANN. § 75-35-15(4) (West 2019).

⁷⁷ Complaint, *Upton’s Naturals Co.*, *supra* note 63, at 14.

prohibition against using the word “meat” on their plant-based product labels violated their First Amendment free speech right (as the word was not misleading), and caused the plaintiffs and consumers irreparable harm due to their inability to engage in non-misleading speech and provide useful information about their products.⁷⁸ The complaint further asserted that the statute was “a direct result of the lobbying efforts made by meat industry groups” and that “Mississippi state legislators publicly stated that they were banning sellers of meat alternatives from using meat terms . . . because the meat industry groups had asked them to.”⁷⁹ The Mississippi Department of Agriculture and Commerce, in response to the lawsuit, stated that it has a “‘duty and obligation to enforce the law’ and that it wanted to ensure that consumer[s] in the state have ‘clear information on the meat and non-meat products they purchase.’”⁸⁰ Additionally, Mr. Gipson, the Department’s commissioner and a defendant to the suit, who is also a cattle farmer, stated in an interview before the lawsuit was filed that “[t]he law will preserve the traditional meaning of the word meat.”⁸¹

In September of 2019, Mississippi retracted the controversial regulations and proposed new rules that would allow plant-based products to use meat related terminology as long as the package label prominently displayed qualifiers such as “‘meat free,’ ‘meatless,’ ‘plant-based,’ ‘vegetarian,’ ‘vegan’ or uses other comparable terms.”⁸² The lawsuit is still pending, but the plaintiffs will consider dropping the lawsuit if the proposed regulations are adopted.⁸³

3. Arkansas

On July 22, 2019, Turtle Island Foods, doing business as The Tofurky Company, commenced a second lawsuit challenging a state’s

⁷⁸ *Id.* at 16–17.

⁷⁹ *Id.* at 10.

⁸⁰ Shanker & Mulvany, *supra* note 55.

⁸¹ *Id.*

⁸² Press Release, Andrew Wimer, Assistant Dir. of Commc’ns, Inst. for Just., Under New Proposed Regulation, “Veggie” Burgers Will Be Legal in Mississippi, (Sept. 6, 2019), <https://ij.org/press-release/under-new-proposed-regulation-veggie-burgers-will-be-legal-in-mississippi/> [<https://perma.cc/BG8S-3HRC>]. See also 02-001-407 MISS. CODE R. §§ 112, 113 (LexisNexis 2019).

⁸³ Press Release, Wimer, *supra* note 82.

“meat” labeling law as unconstitutional.⁸⁴ Filed in the U.S. District Court for the Eastern District of Arkansas against the Director of Arkansas’s Bureau of Standards, the suit alleged Arkansas’s new “Truth in Labeling” law violated the First Amendment’s Free Speech Clause, the Fourteenth Amendment’s Due Process Clause, and the dormant Commerce Clause because it prohibited any product “not derived from harvested livestock, poultry, or cervids” from being represented as meat.⁸⁵ The statute explicitly states that “[m]eat” does not include a . . . [s]ynthetic product derived from a plant . . . ” and includes a “vague” provision banning utilization of “a term that is the same as or similar to a term that has been used or defined historically in reference to a specific agricultural product.”⁸⁶ Even though Tofurky’s plant-based products already contained qualifiers such as “vegan” on their labels, under the new statute those labels are insufficient as the label still displayed a meat related term.⁸⁷ The statute “essentially states that only animal-based products can be called ‘meat’ or be labeled with the names of common meat products [such as ‘burger,’ ‘sausage,’ ‘roast,’ etc.]”⁸⁸ Lawmakers supporting the law contend that the regulation protects consumers and prevents them from being “‘misled or confused’ by alternative meat . . . products.”⁸⁹ Opponents argue that the law “censor[s] the truthful speech of producers of meat alternatives— which [is] not in any way confusing to consumers” as “businesses often ‘rely on figurative language’ to describe and sell products.”⁹⁰ For example, “peanut butter” does not contain any butter derived from a cow.⁹¹

As of October 2019, the court heard oral arguments but had not issued a ruling as to whether or not the law’s enforcement will be blocked. Instead, the court requested the parties submit their

⁸⁴ Complaint, *Soman*, *supra* note 7, at 1. The lawsuit was “backed by the American Civil Liberties Union, the Animal Legal Defense Fund and the Good Food Institute.” Linda Satter, *No Ruling for Block of State’s Label Law*, ARK. DEMOCRAT-GAZETTE (Oct. 8, 2019, 7:17 AM), <https://www.arkansasonline.com/news/2019/oct/08/no-ruling-for-block-of-state-s-label-la/> [<https://perma.cc/N5FA-6FNE>].

⁸⁵ Complaint, *Soman*, *supra* note 7, at 1, 7.

⁸⁶ *Id.* at 8; Handel, *supra* note 25.

⁸⁷ Satter, *supra* note 84.

⁸⁸ Mole, *supra* note 44.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

arguments in writing before a decision is made.⁹² The case is currently pending.

C. “Dairy Wars”

The “meat” labeling dispute is just the latest debate between the animal agricultural industry and plant-based food companies as the traditional meat and dairy industries try to limit how alternative foods can be marketed to consumers.⁹³ One such debate is the disagreement over use of the word “milk” on plant-based food products.⁹⁴ Over two decades ago, the Soyfoods Association of America petitioned the FDA to “recognize the term ‘soymilk’ as the established common or usual name” for a beverage product made of soybeans and water.⁹⁵ The FDA responded that they were unable to make a timely decision within the agency’s specified time frame and, to date, it has not made a determination regarding Soyfoods Association’s request for the term “soymilk.”⁹⁶ In response to the proliferation of plant-based non-dairy products using the term “milk,” the dairy industry has also petitioned the FDA to request that the agency take action against non-dairy products using the term, as the products created competition with dairy products and were allegedly mis-branded, caused consumer confusion, and could not legally be labeled milk under the federal regulation’s standards of identity as they did not come from a cow.⁹⁷ The FDA has not taken any enforcement action in response to the petition.⁹⁸

Recently, proponents of stricter non-dairy product labeling requirements have reintroduced a bill to Congress known as the Dairy Pride Act, “Defending Against Imitations and Replacements of Yogurt, Milk, and Cheese To Promote Regular Intake of Dairy Everyday Act.”⁹⁹ The proposed bill, which failed to pass Congress in

⁹² Satter, *supra* note 84.

⁹³ Abarbanel, *supra* note 22.

⁹⁴ See Lauren Harris, *Mooove Over Cow’s Milk: Why the FDA Should Amend Their Guidelines to Include for Plant-Based Alternatives to Conventional Animal-Based Foods*, 39 N. ILL. U. L. REV. 301, 310 (2019).

⁹⁵ *Id.*

⁹⁶ *Id.* at 310, 311 n.77.

⁹⁷ *Id.* at 311.

⁹⁸ *Id.* at 312.

⁹⁹ Beth Newhart, *Senators Reintroduce Dairy Pride Act*, DAIRY REP. (Mar. 19, 2019, 3:15 PM), <https://www.dairyreporter.com/Article/2019/03/19/Senators-reintroduce-Dairy-Pride-Act#> [<https://perma.cc/LH9L-CGB9>].

2017, contends that a food is a dairy product only if it is derived from the “lacteal secretion” obtained from milking mammals, and would require the FDA to enforce the dairy and non-dairy standards of identity, which could prohibit plant-based products from utilizing dairy-related terms.¹⁰⁰ Dairy groups have supported the bill, but those opposing it believe the proposed restrictions are “unnecessary, costly and unconstitutional” as the restrictions would “hinder innovation,” create high costs to change product labels that could potentially put some plant-based food companies out of business, and potentially be an unconstitutional restriction on commercial free speech.¹⁰¹

Additionally, there is some litigation precedent regarding the “dairy wars” that the “meat wars” could use as a guide for state disputes in which plant-based products support the use of terms related to “milk.” In the “dairy wars” cases, courts typically “ruled in favor of the plant-based companies or sent the case to the jurisdiction of the FDA.”¹⁰² For instance, in *Ang v. Whitewave Foods Co.*, plaintiffs alleged that defendant’s plant-based milks were misbranded, but the court, ruling in the defendant’s favor, stated that “names ‘soy milk,’ ‘almond milk,’ and ‘coconut milk,’ accurately describe Defendants’ products.”¹⁰³ The judge explained, “[a]s set forth in the regulations, these names clearly convey the basic nature and content of the beverages, while clearly distinguishing them from milk that is derived from dairy cows.”¹⁰⁴ In another case, *Kelley v. WWF Operating Co.*, the plaintiff brought a lawsuit claiming consumer confusion as she believed almond milk was more nutritious than cow’s milk and alleging misbranding and false advertising. There, the court stated “there is no dispute that Congress has enacted a comprehensive scheme to maintain uniformity in food labeling and has delegated the authority of administering it to the FDA.”¹⁰⁵ The court determined that the FDA had authority over the issue and those issues should be left to

¹⁰⁰ *Id.*

¹⁰¹ *Id.* See also Harris, *supra* note 94, at 324; Beth Newhart, *Plant-Based Labels Argument Continues*, DAIRY REP. (Jan. 29, 2019, 8:25 AM), <https://www.dairyreporter.com/Article/2019/01/29/Plant-based-labels-argument-continues> [<https://perma.cc/Q9US-P6F6>].

¹⁰² Harris, *supra* note 94, at 312.

¹⁰³ *Id.* (quoting *Ang v. Whitewave Foods Co.*, No. 13-cv-1953, 2013 U.S. Dist. LEXIS 173185, at *12 (N.D. Cal. Dec. 10, 2013)).

¹⁰⁴ *Id.* (quoting *Ang*, 2013 U.S. Dist. LEXIS 173185, at *12).

¹⁰⁵ *Id.* at 313 (quoting *Kelley v. WWF Operating Co.*, No. 1:17-cv-117-LJO-BAM, 2017 U.S. Dist. LEXIS 86971, at *11 (E.D. Cal. June 6, 2017)).

that agency, not Congress or the judiciary, and clarification by the FDA “of the law would preempt meritless lawsuits.”¹⁰⁶

IV. A “SIZZLING” SOLUTION

Similar to the outcome of the cases in the “dairy wars” litigation, the “meat wars” cases should either be decided in favor of the plant-based products companies or find that the FDA should provide guidance or clarification as to the labeling dispute.¹⁰⁷ As such, the FDA should address the plant-based meat alternatives food labeling issue mentioned above by creating a new category and/or guidelines for plant-based meat alternatives. This is because the word “meat” accurately reflects the description of the plant-based meat alternative products, even though the term is used to describe a product that does not contain tissue derived from an animal.

A. State Law Reform Inadequate

Legislative reform or amendment at the state level is an inadequate approach to efficiently address the food labeling debate. Because the decisions are left to local governments, there have been numerous differing opinions on what the best resolution should be, and this has created a pressing situation in this country.¹⁰⁸ Due to the variations in wording of state laws and application of those state laws to certain products, it is unclear if a state’s law would survive a lawsuit if challenged in court.¹⁰⁹ Furthermore, if one state’s law was successful and another state’s law was unsuccessful in a legal challenge, thus creating multiple labeling standards, the food manufacturing company would be required to accommodate the various standards to sell the product in both states without being in violation of a state law. Even if there are two unchallenged state laws, a food manufacturer selling products in both states would have to comply with each state’s law to avoid the possibility of violating the respective law. This is because, as

¹⁰⁶ *Id.*

¹⁰⁷ *See Kelley*, U.S. Dist. LEXIS 86971, at *12–13; *Ang*, 2013 U.S. Dist. LEXIS 173185, at *11–12.

¹⁰⁸ HUTT ET AL., *supra* note 4, at 289.

¹⁰⁹ Kerry Halladay, *Meat Label Word Wars: Fake Meat Word War Continues in Mississippi, Missouri*, W. LIVESTOCK J. (July 12, 2019), https://www.wlj.net/top_headlines/fake-meat-word-war-continues-in-mississippi-missouri/article_389e5528-a4e9-11e9-9f3c-ff46ec1c5b7a.html [<https://perma.cc/37T9-KXMZ>].

long as the federal requirements are met, the states are allowed to make stricter laws if they are not preempted by any federal law.¹¹⁰ Different requirements for different states could raise the food producer's costs of compliance having long-term and far-reaching effects to the company's bottom line.¹¹¹ Reform at the state level is insufficient as it creates a multitude of standards that food producers must abide by to be in regulatory compliance.¹¹²

B. Federal Law Reform is More Effective

Reformation of the law at a national level is more efficient than state reformation because of the uniformity that a federal law provides across every state in the country.¹¹³ Indeed, this uniformity was an argument in support of creating federal food law regulations in the 1900s.¹¹⁴ Among others, food industry lobbyists complained about manufacturers "conforming to a patchwork of state regulations" that required multiple standards and varied nationwide.¹¹⁵ It was determined that a federal law would be appropriate to address concerns about misbranding and mislabeling food products, and thus the Pure Food and Drug Act of 1906 was enacted.¹¹⁶ Since it was able to be applied nationally, a federal law was favored over individual state laws.¹¹⁷

Furthermore, because food products crossing state lines are considered interstate commerce, the federal government already has the authority to regulate those products under Article I of the Constitution.¹¹⁸ The Constitution grants Congress the power to regulate commerce among the states, and Congress has imbued the

¹¹⁰ Michaela Oldfield, *It's Quite Natural for States to Regulate Labeling*, MICH. ST. U. CTR. FOR REGIONAL FOOD SYS. (Jan. 15, 2016), https://www.canr.msu.edu/news/its_quite_natural_for_states_to_regulate_labeling [<https://perma.cc/RW9C-K8P3>].

¹¹¹ Mario Moore, *Food Labeling Regulation: A Historical and Comparative Survey 19* (2001) (unpublished Third Year Paper, Harvard University), <https://dash.harvard.edu/handle/1/8965597> [<https://perma.cc/4CWF-EM4A>].

¹¹² See HUTT ET AL., *supra* note 4, at 293.

¹¹³ *Id.* at 289–90.

¹¹⁴ *Id.*

¹¹⁵ Moore, *supra* note 111, at 19.

¹¹⁶ *Id.*

¹¹⁷ HUTT ET AL., *supra* note 4, at 293.

¹¹⁸ See U.S. CONST. art. 1, § 8, cl. 3.

FDA with jurisdiction to regulate products in interstate commerce through the FD&C Act.¹¹⁹ Additionally, the FDA has a regulatory system in place to issue new rules or amendments so no new process will have to be created in order to reform a current stipulation.¹²⁰ Since the federal government has the authority and a preexisting process to uniformly enact a law, an amendment at the federal level is more appropriate than one at the state level.

C. Proposal

Since the FDA has the responsibility and authority to regulate plant-based food labels, the FDA should amend its guidelines to create a section for plant-based “meat” alternative food products that would allow an exception for these products to use meat-related language.¹²¹ As the products do not contain protein derived from the flesh of an animal, the USDA would not pre-approve the food labels nor have a role in the regulation process.¹²² To amend its guidelines, the FDA should create a new category under Food and Drug Administration Title 21, Chapter I, Subchapter B – Food for Human Consumption in the Code of Federal Regulations potentially titled “Plant-Based Meat Alternatives” because, although the products do not contain animal protein, the word “meat” is used to accurately reflect the description of the product and is not misleading nor confusing to consumers.¹²³ The word “meat” is used as an expressive term to help convey a description of the product using familiar and common terminology so consumers can identify what the product is.¹²⁴

Similar to how the Arkansas, Louisiana, and Mississippi state bills explicitly exclude plant-based products from being labeled as meat, the amendment should explicitly include a provision that allows plant-based “meat” alternatives to be labeled as meat and utilize meat-related terminology. Like Oklahoma’s and Missouri’s laws, an appropriate qualifier must be included on the product either within the

¹¹⁹ HUTT ET AL., *supra* note 4, at 271. As such, the FDA does not have complete authority over *intrastate* commerce, merely a rebuttable presumption. *Id.* at 272.

¹²⁰ Harris, *supra* note 94, at 325–26.

¹²¹ See Complaint, *Soman*, *supra* note 7, at 5 (stating the FDA has authority to regulate plant-based meat labels under the FD&C Act).

¹²² See HUTT ET AL., *supra* note 4, at 318.

¹²³ See Harris, *supra* note 94, at 326.

¹²⁴ Abarbanel, *supra* note 22.

item name or on the label (such as “plant-based,” “veggie,” “vegan,” etc.), so as to accurately label the food. Additionally, common use terminology of another food that is being replicated by a plant-based “meat” alternative would be permitted (i.e., “veggie hotdog”).¹²⁵ These changes provide elucidation for the regulation of increasingly popular food items that rely on “figurative language” to display their content.¹²⁶

Furthermore, an amendment would not be novel as the FDA has previously amended its guidelines.¹²⁷ Some could argue that creating a new category is encouraging companies to “mislabel” their products until the federal agencies capitulate and amend their guidelines. But, the alternative scenario would be for the FDA to enforce their current guidelines against all common-name products that do not specifically conform to the rules, which would unnecessarily expend time, resources, and create consumer confusion, as many items, in order to be in compliance, would have to be given unrecognizable product names.¹²⁸

V. CONCLUSION

In summation, the FDA should amend its guidelines to allow plant-based “meat” alternative products use of the word “meat” and related “meat” terminology on their packaging labels as the terms are not misleading, but rather illuminate the characteristics and established common or usual name of the products. An amendment provides companies with support and clarification to accurately describe their plant-based goods, and legislatively settles the “beef” on a federal level regarding labels for plant-based “meat” alternative products.

¹²⁵ See Harris, *supra* note 94, at 326.

¹²⁶ See Mole, *supra* note 44.

¹²⁷ Harris, *supra* note 94, at 327.

¹²⁸ See *id.* at 327–28.