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After Upside Foods: Implications for State Cultivated Meat Bans, Federal Preemption, and Industry Compliance

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While the 11th Circuit's decision in *Upside Foods, Inc. v. Commissioner, Florida Department of Agriculture, and Consumer Services* decided only a single case challenging [Florida's cultivated meat ban](#), it will shape preemption litigation, state legislative strategy, and corporate compliance planning for years to come. Food industry executives, regulatory teams, and outside counsel—both within and outside of Florida—should take notice and begin addressing these implications now.

Florida's law prohibits the manufacture, sale, distribution, and holding for sale of cultivated meat within the state. [Upside Foods](#) challenged the ban, arguing that the federal regulatory framework governing meat and poultry inspection preempts state law. The court disagreed.

Product Versus Ingredient: A Narrower Path for Preemption

The court distinguished between state laws that impose ingredient requirements on federally regulated food products and those banning an entire product category. It determined that Florida's cultivated meat prohibition is the latter.

This distinction is significant because federal express preemption provisions in food safety statutes generally aim to prevent states from imposing nonidentical labeling, ingredient, or compositional standards on products federal agencies have already cleared. When a state law is a categorical market exclusion, express preemption becomes harder to establish.

The ruling reminds companies in industry that federal compliance is necessary but insufficient because some states may still outright prohibit the product in question. Interstate operators must now consider that state laws may affect market access as much as federal clearance.

Emboldening State Action: The Patchwork Problem

The court's decision will likely encourage other states to restrict cultivated meat or other emerging food categories. Several have already introduced or enacted legislation targeting cultivated meat, and the result is a growing regulatory patchwork: A product may be allowed in some

jurisdictions but not in others.

Patchwork regulation ultimately creates operational challenges requiring the evaluation of distribution networks, e-commerce fulfillment, third-party marketplace arrangements, warehousing, retailer contracts, and advertising. Labeling and marketing language that meets federal standards may trigger enforcement in restrictive states—and that compliance burden affects distributors, retailers, foodservice companies, and sales platforms, which may also incur liability.

The Dormant Commerce Clause

The Dormant Commerce Clause—which prohibits state laws that discriminate against or impose undue burdens on interstate commerce, even absent conflicting federal legislation—may be more effective in challenging especially restrictive state food bans.

A state law that categorically excludes products manufactured in other states that are lawfully produced, federally inspected, and sold throughout most of the country may be vulnerable to challenge as facially discriminatory, protectionist in purpose or effect, or imposing burdens on interstate commerce that are clearly excessive relative to any legitimate local benefit.

What Companies Should Do Now

Companies that manufacture, distribute, or sell food products in state-restricted categories—including cultivated meat, novel proteins, synthetic ingredients, bioengineered foods, and adjacent product lines—should take the following steps to assess and mitigate potential risk:

- Monitor state legislation, regulatory proposals, and attorney general enforcement priorities in jurisdictions where products are sold, shipped, or warehoused.
- Map product portfolios against state definitions of cultivated meat, lab-grown meat, synthetic products, imitation products, and related regulatory categories. Definitions vary, so one state's ban may impact a product while another's may not.
- Assess distribution, e-commerce, drop-shipping, and third-party marketplace arrangements for exposure in restrictive states. Determine whether geofencing, shipping restrictions, or fulfillment center location decisions are necessary.
- Review labeling, advertising, and marketing language to ensure compliance with federal standards and state consumer protection and food labeling statutes.
- Update distributor, retailer, foodservice customer, and co-manufacturer contracts to allocate risk, define compliance responsibilities, and clarify each side's obligations if a product becomes unlawful.
- Evaluate recall, market withdrawal, and geofencing procedures to ensure rapid compliance if a state bans products already in the distribution chain.
- Preserve documentation of federal compliance, safety substantiation, and business impacts, which will be critical for fact-intensive Dormant Commerce Clause challenges, enforcement activity, and class action defense.
- Plan responses to injunctions, enforcement demands, private suits, and product class actions. Identify counsel; develop litigation hold protocols; and ensure coordination among regulatory, legal, supply chain, and communications teams.

Preemption Strategy for Defense Counsel

Defense attorneys handling food labeling disputes, consumer class actions, and product liability claims should reassess preemption strategy. Although preemption remains a powerful defense, it does not fit every situation, and courts are increasingly focused on the type of state law involved.

Where a plaintiff or regulator challenges a product based on state labeling requirements that conflict with federal labeling standards, express preemption arguments retain force. The federal food safety statutes explicitly provide preemption for labeling, and courts have historically been receptive to these defenses when the conflict is clear.

However, where a claim or regulatory action focuses on product availability—specifically a state's decision to exclude a product—the 11th Circuit's reasoning suggests courts may not treat federal approval as preemptive. Defense counsel should distinguish among labeling-based claims, ingredient-based claims, safety-based claims, and product-ban theories when crafting preemption arguments.

Counsel should also consider other defenses: that jurisdiction lies with the federal agency rather than a state court, whether plaintiffs have standing to bring the action, damages limitations, safe-harbor or statutory-compliance defenses, and Dormant Commerce Clause arguments. Building a robust factual record demonstrating comprehensive federal oversight, the practical impossibility of complying with inconsistent state regimes, and the burden on national distribution systems strengthens these theories.

Looking Ahead

The 11th Circuit's decision in *Upside Foods* narrows the path for federal preemption challenges to state bans on cultivated meat. To address this, food companies should conduct a proactive, state-by-state regulatory evaluation and develop a compliance infrastructure. Likewise, defense counsel will need a more nuanced, multi-theory approach.

The cultivated meat industry is still nascent, and the law will remain fluid as additional states act, federal agencies refine their frameworks, and courts address Dormant Commerce Clause and other constitutional challenges. Investing now in understanding regulatory regimes, preserving evidence, and developing flexible litigation strategies will best position food companies to meet the challenges ahead.

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