

SMITHFIELD FOODS INC  
Form S-8  
September 04, 2003

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# SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

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## FORM S-8

### REGISTRATION STATEMENT

*Under*

*THE SECURITIES ACT OF 1933*

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## Smithfield Foods, Inc.

(Exact Name of Registrant as Specified in its Charter)

Virginia

52-0845861

(State or Other Jurisdiction

(I.R.S. Employer

of Incorporation or Organization)

Identification Number)

200 Commerce Street

23430

Smithfield, Virginia

(Zip Code)

(Address of Principal Executive Offices)

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Smithfield Foods, Inc. 1998 Stock Incentive Plan

(Full Title of the Plan)

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Michael H. Cole, Esq.

Vice President, Secretary and Deputy General Counsel

Smithfield Foods, Inc.

200 Commerce Street

Smithfield, Virginia 23430

(Name and Address of Agent for Service)

(757) 365-3030

(Telephone Number, Including Area Code, of Agent for Service)

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CALCULATION OF REGISTRATION FEE

| <b>Title of Securities to<br/>be Registered</b>                                                                                                             | <b>Amount to be<br/>Registered (1)</b> | <b>Proposed Maximum<br/>Offering Price Per<br/>Share (2)</b> | <b>Proposed Maximum<br/>Aggregate Offering<br/>Price (2)</b> | <b>Amount of<br/>Registration Fee</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------|
| Common Stock, \$0.50 par value per share, with associated Rights to Purchase Series A Junior Participating Preferred Shares, \$1.00 par value per share (3) | 6,000,000                              | \$19.97                                                      | \$119,820,000                                                | \$9,693.44                            |

- (1) Pursuant to Rule 416(a), this Registration Statement also registers such number of additional securities that may be offered pursuant to the terms of the Smithfield Foods, Inc. 1998 Stock Incentive Plan which provides for a change in the amount or type of securities being offered or issued to prevent dilution as a result of stock splits, stock dividends or similar transactions.
  - (2) Calculated pursuant to Rule 457(h)(1) and Rule 457(c) based upon the average of the high and low prices of the Registrant's common stock, \$0.50 par value per share (the Common Stock) on the New York Stock Exchange on September 3, 2003, which was \$19.97.
  - (3) Prior to the occurrence of certain events, the Rights to Purchase Series A Junior Participating Preferred Shares (the Rights) will be attached to and trade with the Common Stock. Value attributable to the Rights, if any, will be reflected in the market price of the Common Stock.
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**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents of the Registrant heretofore filed with the Securities and Exchange Commission (the Commission) are hereby incorporated in this Registration Statement by reference:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended April 27, 2003;
- (2) The Registrant's Current Reports on Form 8-K filed on May 12, 2003 and May 13, 2003; and
- (3) The description of the Common Stock contained in the Registrant's Registration Statement on Form 8-A/A and the description of the Rights contained in the Registrant's Registration Statement on Form 8-A, each filed on May 30, 2001 under Section 12(b) of the Securities Exchange Act of 1934, including any amendments to such Registration Statements hereafter filed.

All reports and other documents filed by the Registrant since the end of the fiscal year covered by the Registrant's document referred to in paragraph (1) above pursuant to Sections 13(a) and (c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the filing of a post-effective amendment which indicates that all securities offered hereunder have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such reports and documents.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 6. Indemnification of Directors and Officers.**

Under the Articles of Incorporation (the Articles) of the Registrant, the liability of officers and directors to the Registrant is eliminated to the fullest extent permitted by Virginia law. Under Virginia law, the liability of an officer or director cannot be limited or eliminated if the officer or director engages in willful misconduct or a knowing violation of the criminal law or of any federal or state securities law, including, without limitation, any claim of unlawful insider trading or manipulation of the market for any security.

To the fullest extent permitted by Virginia law, the Articles require the Registrant to indemnify any director or officer who is, was or is threatened to be made a party to any proceeding because he or she is or was a director or officer of the Registrant, or because he or she is or was serving the Registrant or any other legal entity in any capacity at the request of the Registrant while a director or officer of the Registrant, against any liability, including reasonable expenses and legal fees, incurred in the proceeding. Under the Articles, proceeding is broadly defined to include pending, threatened or completed actions of all types, including actions by or in the right of the Registrant. Similarly, liability is defined to include not only judgments, but also settlements, penalties, fines and certain excise taxes. The Articles also provide that the Registrant

may, but is not

obligated to, indemnify its other employees or agents. The indemnification provisions also require the Registrant to pay reasonable expenses incurred by a director or officer of the Registrant in a proceeding in advance of the final disposition of any such proceeding, provided that the indemnified person undertakes to repay the Registrant if it is ultimately determined that such person was not entitled to indemnification. Virginia law does not permit indemnification against willful misconduct or a knowing violation of the criminal law.

The rights of indemnification provided in the Articles are not exclusive of any other rights which may be available under any insurance or other agreement, by vote of stockholders or disinterested directors or otherwise. In addition, the Articles authorize the Registrant to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Registrant, whether or not the Registrant would have the power to provide indemnification to such person, to protect any such person against any liability arising from his or her service to the Registrant or any other legal entity at the request of the Registrant.

**Item 8. Exhibits.**

See Exhibit Index following signatures.

**Item 9. Undertakings.**

(1) The undersigned Registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933, as amended (the Securities Act );

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (1)(a)(i) and (1)(a)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(2) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is

incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.



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Ray A. Goldberg

/s/ WENDELL H. MURPHY

Director

September 4, 2003

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Wendell H. Murphy

/s/ FRANK S. ROYAL, M.D.

Director

September 4, 2003

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Frank S. Royal, M.D.

/s/ JOHN T. SCHWIETERS

Director

September 4, 2003

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John T. Schwieters

/s/ MELVIN O. WRIGHT

Director

September 4, 2003

Melvin O. Wright

**EXHIBIT INDEX**

| <u>Exhibit<br/>Number</u> | <u>Description</u>                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1                       | Articles of Amendment effective August 29, 2001 to the Amended and Restated Articles of Incorporation, including the Amended and Restated Articles of Incorporation of the Registrant, as amended to date (incorporated by reference to Exhibit 3.1 to the Company's Amendment No. 1 to Form 10-Q Quarterly Report filed with the Commission on September 12, 2001). |
| 4.2                       | Amendment to the Bylaws adopted May 30, 2001, including the Bylaws of the Company, as amended to date (incorporated by reference to Exhibit 2 to the Company's Registration Statement on Form 8-A filed with the Commission on May 30, 2001).                                                                                                                        |
| 4.3                       | Form of certificate representing the Registrant's Common Stock, par value \$.50 per share (incorporated by reference to Exhibit 3 to the Registrant's Registration Statement on Form 8-A filed with the Commission on May 30, 2001).                                                                                                                                 |
| 4.4                       | Rights Agreement dated as of May 30, 2001, between the Registrant and Computershare Investor Services LLC, Rights Agent (incorporated by reference to Exhibit 4 to the Registrant's Registration Statement on Form 8-A filed with the Commission on May 30, 2001).                                                                                                   |
| 4.5                       | Form of certificate representing Rights (incorporated by reference to Exhibit 5 to the Registrant's Registration Statement on Form 8-A filed with the Commission on May 30, 2001).                                                                                                                                                                                   |
| 5                         | Opinion of Counsel.                                                                                                                                                                                                                                                                                                                                                  |
| 23.1                      | Consent of Independent Auditors.                                                                                                                                                                                                                                                                                                                                     |
| 23.2                      | Consent of Counsel (filed as part of Exhibit 5).                                                                                                                                                                                                                                                                                                                     |
| 24                        | Power of Attorney (included herein).                                                                                                                                                                                                                                                                                                                                 |