

**ENHANCED ABATEMENT TERMS**  
**Secretary of Labor v. Smithfield Packaged Meats Corp.**  
**OSHA Inspection No. 1472736**  
**Docket No. 20-1317**

**I. Interim Measures Related to Employee Exposure to SARS-CoV-2**

1. Smithfield will continue to utilize its July 6, 2021 COVID-19 Preparedness and Response Plan, including all attachments, as its written COVID-19 plan to reduce employees' exposure to SARS-CoV-2. The current version of the Plan will be revised when necessary or appropriate to address potential new SARS-CoV-2 variants and changing guidance from federal, state, and local public health authorities. The parties hereby incorporate by reference as Interim Control Measures the July 6, 2021 COVID-19 Preparedness and Response Plan.
2. Employees, managers, and supervisors must be trained on the COVID-19 plan in a language and at a literacy level that they understand. Any written materials provided must also be in a language employees understand. Smithfield shall consult with authorized employee representatives and others to identify language needs, including interpretive services.
3. The COVID-19 plan must include a requirement for a team of individuals designated by position to coordinate the implementation of the written plan. This team must include individuals who are knowledgeable about the plan's purpose and compliance procedures and who will oversee compliance with all aspects of the plan.
4. Smithfield shall provide OSHA and the authorized employee representative with any materially updated versions of the COVID-19 Preparedness and Response Plan.
5. Smithfield will not retaliate against employees for reporting concerns about Smithfield's COVID-19 Preparedness and Response Plan. Additionally, Smithfield will not implement any policies or procedures that incentivize employees with COVID-19 symptoms or who test positive for COVID-19 to enter the facility.
6. Smithfield remains committed to encouraging COVID-19 vaccinations among its employee population. This includes providing education about the COVID-19 vaccines and, in many instances, on-site access to vaccination.

**II. Enhanced Abatement – Infectious Diseases Preparedness Plan**

1. Within 120 days of the Administrative Law Judge's Order closing the case, Smithfield will establish a multi-disciplinary team of subject matter experts from both inside and outside the company (the "Team") to conduct a comprehensive infectious disease hazard assessment and prepare a written report with recommendations to be implemented at the Sioux Falls facility.
2. The assessment must include management and authorized employee representative participation and must evaluate work areas and other areas where employees congregate (e.g., break rooms, lunch rooms, locker rooms).

3. The assessment shall include the following elements to minimize employees' potential exposure to infectious diseases:
  - a. Evaluation of existing programs: Review Smithfield's infectious disease preparedness plans and protocols. Upon reasonable request, Smithfield agrees to provide any additional relevant documentation to the Team that would impact infection control practices.
  - b. Epidemiology and Surveillance: Recommendations for ongoing surveillance of outbreaks, epidemics, and pandemics related to existing and emerging infectious pathogens. This shall include recommendations to help Smithfield determine the type and timing of any additional controls needed to protect workers.
  - c. Engineering Controls: Recommendations related to ventilation, hand washing stations/touch-free hand sanitizers, physical barriers, and social distancing.
  - d. Administrative Controls: Recommendations related to screening employees, contractors and visitors for infectious diseases; developing isolation protocols; wearing face coverings, face shields, gowns, and gloves; adjusting work processes, production practices, and employee work schedules and/or break times consistent with production needs to prevent people from congregating and ensure social distancing. The Team shall also review Smithfield's leave and incentive policies to evaluate their consistency with the recommendations offered by the Centers for Disease Control and Prevention and the National Institute for Occupational Safety and Health.
  - e. Work Practice Controls: Recommendations related to hand-washing, eliminating the use of shared items that could be sources of transmission, cleaning and disinfecting high-touch surfaces, equipment, or shared items.
  - f. Personal Protective Equipment and Respiratory Protection: The Team shall identify conditions that would necessitate the use of respiratory protection different from what is currently in place at the site, to include the type of respiratory protection needed in response to infectious diseases that would be consistent with requirements set forth at 29 C.F.R. §§ 1910.132 and 1910.134. The Team shall include recommendations regarding the number of respirators and other PPE to stockpile in preparation for an outbreak, epidemic, or pandemic.
  - g. Medical Management: Recommendations related to on-site medical management, including the potential for additional licensed, health care personnel. The Team shall provide recommendations on developing infectious disease testing strategies, procedures for employees to report signs and symptoms of an infectious disease, contact tracing procedures (including notifying employees and third-parties of potential exposure), and isolation, quarantine, treatment, and vaccination protocols.
  - h. Continuity of Operations: Recommendations on a continuity plan that describes preparation, implementation, and recovery from an infectious disease.
4. Within ninety days of receiving the Team's recommendations, Smithfield shall develop a written site-specific Infectious Diseases Preparedness Plan and implementation schedule for the Sioux Falls, South Dakota meatpacking facility.

- a. Smithfield management will consult with authorized employee representatives in developing the plan. Employees and their authorized employee representatives shall be consulted in identifying deficiencies, if any, in Smithfield's response to the current COVID-19 pandemic and have the ability to suggest improvements (*e.g.*, through surveys, focus groups, etc.).
  - b. The plan must include a requirement for a team of individuals designated by position to coordinate the implementation of the written plan. This team must include individuals who are knowledgeable about the plan's purpose and compliance procedures and who will oversee compliance with all aspects of the plan.
  - c. Smithfield shall consider the Team's recommendations when creating the Infectious Diseases Preparedness Plan. If Smithfield does not adopt any of those recommendations, Smithfield shall document the reasons for doing so and shall describe alternative measures, if any, that were adopted instead. Upon request by OSHA, Smithfield will provide written justification for its decision not to adopt the recommendation(s).
  - d. The plan shall identify each department that has a role in implementing the plan (*e.g.*, human resources, training, medical director's office, occupational health clinic, safety and health division, payroll, and authorized employee representatives) and describe the procedures that are in place to ensure coordination between the departments.
  - e. Smithfield shall train employees on the Infectious Diseases Preparedness Plan annually, and more frequently as needed, in a language and at a literacy level that employees understand. Smithfield shall consult with authorized employee representatives and others as needed to identify language needs, including interpretive services.
5. Within one year of implementing the Infectious Diseases Preparedness Plan in Sioux Falls, South Dakota, Smithfield will reasonably coordinate with the OSHA Directorate of Cooperative and State Programs to identify industry-wide outreach opportunities (*e.g.*, conducting webinars, developing best practices) related to the development and implementation of an Infectious Diseases Preparedness Plan.
  6. Within 120 days of the Administrative Law Judge's Order closing the case, the parties will further explore whether additional OSHA cooperative resources are available to participate in the hazard evaluation at Smithfield's Sioux Falls, SD facility, including the review, development and implementation of the Infectious Diseases Preparedness Plan.
  7. Smithfield, in consultation with authorized employee representatives, shall evaluate the plan annually, including evaluating the facility's stockpile of PPE and other essential supplies.

### **III. Safety and Health Management System**

1. Smithfield represents that it currently maintains a robust, comprehensive Safety and Health Management System ("SHMS"), known as the Smithfield Injury Prevention System

- (“SIPS”) and will continue to maintain, update and train employees on the system in a language and at a literacy level that employees understand.
2. Smithfield agrees to incorporate its Infectious Diseases Preparedness Plan into its SHMS.
  3. Smithfield agrees to update any component of its SHMS as necessary to align with the Infectious Diseases Preparedness Plan.

#### **IV. Selection of Third-Party Consultants and OSHA Notification**

1. Smithfield agrees to establish a multi-disciplinary team of qualified third-party consultants and internal experts to:
  - a. Assist in the development and implementation of enhanced abatement measures described above; and
  - b. Assist with Smithfield’s implementation of the enhanced abatement measures described above.
2. The Team shall have the education, training, and experience necessary to make recommendations on reducing the risk of employee exposure to infectious diseases in the facility. At least one member of the Team shall include a physician board-certified in infectious diseases and/or occupational medicine or an epidemiologist with experience and training in infectious disease epidemiology and public health. Backgrounds in industrial hygiene and meat processing plant design are also relevant. At least one member of the team shall have prior experience developing infectious disease programs.
3. Smithfield may approach and seek to retain consultants for the team who have previously worked with Smithfield on infectious disease prevention related to COVID-19. These consultants will have initial priority as members of the interdisciplinary team because of their experience with Smithfield’s facility and work process, and the meat industry generally.
4. Smithfield shall provide the credentials of all members of the consulting team to OSHA within a reasonable amount of time to meet the 120-day deadline set forth in Section II, Paragraph 1. Following the exchange of expert qualifications, Smithfield and the Secretary will engage in good-faith discussions regarding concerns, if any, arising from the Secretary’s review of team member credentials. The parties will work together cooperatively to ensure that the multi-disciplinary team is timely vetted and that each team member possesses the education, training, and experience necessary to make recommendations on reducing the risk of employee exposure to infectious diseases in the facility.
5. Smithfield must provide the Team’s recommendations related to the Infectious Diseases Preparedness Plan to OSHA within 30 days of receipt of the final report. Smithfield will identify and label the final report as “Confidential Commercial Information Not Subject to FOIA” and the Secretary, in turn, will apply all appropriate exemptions under the Freedom of Information Act (“FOIA”) and Executive Order 12600.
6. Smithfield must provide its Sioux Falls, South Dakota Infectious Diseases Preparedness Plan to OSHA within thirty days of completion of the final plan.

7. Smithfield shall not require a warrant for entry related to a follow-up inspection at the Sioux Falls, SD facility and will voluntarily comply with all reasonable requests by the Secretary to provide information regarding compliance with this Agreement.

*Definitions:*

*Authorized Employee Representative* means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees who are members of the collective bargaining unit.

*Face covering* means a product worn on the face specifically covering at least the wearer's nose and mouth with the primary purpose of providing source control by reducing the number of expelled droplets and aerosols from the wearer's nose and mouth into the air, and to provide a degree of particulate filtration to reduce the amount of inhaled particulate matter. This definition includes face coverings that otherwise meet the definition of face covering but are constructed of clear plastic (or include clear plastic windows), such as those utilized by persons communicating with those who are deaf or hard-of-hearing or when seeing a person's mouth is otherwise important. Face coverings must be made of at least two layers of fabric that is either a tightly-woven material or non-woven material, and have no visible holes or openings in the material.

*Facemask* means a surgical, medical procedure, dental, or isolation mask that is FDA-cleared or authorized by an FDA EUA. Facemasks may also be referred to as "medical procedure masks." Facemasks have been used for medical purposes, such as prevention of infectious disease transmission. In this manner, they function as source control.

*Face shield* means a device, typically made of clear plastic, that is certified to ANSI/ISEA Z87 or covers the wearer's eyes, nose, and mouth to protect from splashes, sprays, and spatter of fluids, wraps around the sides of the wearer's face (i.e., temple-to-temple), and extends below the wearer's chin.

*Vaccination* means a biological product authorized or licensed by the FDA to prevent or provide protection against an infectious disease.