

TYSON FOODS INC

FORM 10-K (Annual Report)

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended **September 27, 2008**

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission File No. 001-14704

TYSON FOODS, INC.

(Exact Name of Registrant as specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

71-0225165
(I.R.S. Employer Identification No.)

2200 Don Tyson Parkway, Springdale, Arkansas
(Address of principal executive offices)

72762-6999
(Zip Code)

Registrant's telephone number, including area code:

(479) 290-4000

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class
Class A Common Stock, Par Value \$0.10

Name of Each Exchange on Which Registered
New York Stock Exchange

Securities Registered Pursuant to Section 12(g) of the Act: Not Applicable

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

On March 29, 2008, the aggregate market value of the registrant's Class A Common Stock, \$0.10 par value (Class A stock), and Class B Common Stock, \$0.10 par value (Class B stock), held by non-affiliates of the registrant was \$4,549,610,751 and \$341,230, respectively. Class B stock is not publicly listed for trade on any exchange or market system. However, Class B stock is convertible into Class A stock on a share-for-share basis, so the market value was calculated based on the market price of Class A stock.

On October 25, 2008, there were 307,609,035 shares of the registrant's Class A stock and 70,021,155 shares of its Class B stock outstanding.

TYSON FOODS, INC.

INCORPORATION BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the registrant's Annual Meeting of Shareholders to be held February 6, 2009, are incorporated by reference into Part III of this Annual Report on Form 10-K.

TABLE OF CONTENTS

PART I		PAGE
Item 1.	Business	3
Item 1A.	Risk Factors	7
Item 1B.	Unresolved Staff Comments	11
Item 2.	Properties	11
Item 3.	Legal Proceedings	12
Item 4.	Submission of Matters to a Vote of Security Holders	15
PART II		
Item 5.	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	16
Item 6.	Selected Financial Data	17
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	18
Item 7A.	Quantitative and Qualitative Disclosure About Market Risk	37
Item 8.	Financial Statements and Supplementary Data	39
Item 9.	Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	78
Item 9A.	Controls and Procedures	78
Item 9B.	Other Information	78
PART III		
Item 10.	Directors, Executive Officers and Corporate Governance	79
Item 11.	Executive Compensation	79
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	79
Item 13.	Certain Relationships and Related Transactions, and Director Independence	80
Item 14.	Principal Accounting Fees and Services	80
PART IV		
Item 15.	Exhibits, Financial Statement Schedules	80

TYSON FOODS, INC.

PART I

ITEM 1. BUSINESS

GENERAL

Founded in 1935, Tyson Foods, Inc. and its subsidiaries (collectively, “Company,” “we,” “us” or “our”) are the world’s largest meat protein company and the second-largest food production company in the *Fortune* 500 with one of the most recognized brand names in the food industry. We produce, distribute and market chicken, beef, pork, prepared foods and related allied products. Our operations are conducted in four segments: Chicken, Beef, Pork and Prepared Foods. Some of the key factors influencing our business are customer demand for our products; the ability to maintain and grow relationships with customers and introduce new and innovative products to the marketplace; accessibility of international markets; market prices for our products; the cost of live cattle and hogs, raw materials and grain; and operating efficiencies of our facilities.

We operate a fully vertically integrated poultry production process. Our integrated operations consist of breeding stock, contract growers, feed production, processing, further-processing, transporting and marketing chicken and related allied products, including animal and pet food ingredients. Through our wholly-owned subsidiary, Cobb-Vantress, Inc. (Cobb), we are the largest poultry breeding stock supplier in the world, supplying Tyson as well as a number of other poultry production companies. Investing in breeding stock research and development allows us to breed into our flocks the characteristics found to be most desirable.

We also process live fed cattle and hogs and fabricate dressed beef and pork carcasses into primal and sub-primal meat cuts, case-ready and fully-cooked meats. In addition, we derive value from allied products such as hides and variety meats sold to further processors and others.

We produce a wide range of fresh, value-added, frozen and refrigerated food products. Our products are marketed and sold primarily by our sales staff to national and regional grocery retailers, regional grocery wholesalers, meat distributors, warehouse club stores, military commissaries, industrial food processing companies, national and regional chain restaurants or their distributors, international export companies and domestic distributors who serve restaurants, foodservice operations such as plant and school cafeterias, convenience stores, hospitals and other vendors. Additionally, sales to the military and a portion of sales to international markets are made through independent brokers and trading companies.

We have been exploring ways to commercialize our supply of poultry litter and animal fats. In June 2007, we announced a 50/50 joint venture with Syntroleum Corporation, called Dynamic Fuels LLC. Dynamic Fuels LLC will produce renewable synthetic fuels targeting the renewable diesel and jet fuel markets. Construction of production facilities is expected to continue through late 2009, with production targeted for early 2010.

FINANCIAL INFORMATION OF SEGMENTS

We operate in four segments: Chicken, Beef, Pork and Prepared Foods. The contribution of each segment to net sales and operating income (loss), and the identifiable assets attributable to each segment, are set forth in Note 18, “Segment Reporting” of the Notes to Consolidated Financial Statements. In the fourth quarter fiscal 2008, we began to manage and report the operating results and identifiable assets of our logistics operations in each segment. All periods in this report reflect the change. In prior period reports, logistics operations were managed and reported separately and included in Other.

DESCRIPTION OF SEGMENTS

Chicken: Chicken operations include breeding and raising chickens, as well as processing live chickens into fresh, frozen and value-added chicken products and logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. It also includes sales from allied products and our chicken breeding stock subsidiary.

Beef: Beef operations include processing live fed cattle and fabricating dressed beef carcasses into primal and sub-primal meat cuts and case-ready products. This segment also includes sales from allied products such as hides and variety meats, as well as logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. Allied products are marketed to manufacturers of pharmaceuticals and technical products.

Pork: Pork operations include processing live market hogs and fabricating pork carcasses into primal and sub-primal cuts and case-ready products. This segment also includes our live swine group, related allied product processing activities and logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. We sell allied products to pharmaceutical and technical products manufacturers, as well as a limited number of live swine to pork processors.

TYSON FOODS, INC.

Prepared Foods: Prepared Foods operations include manufacturing and marketing frozen and refrigerated food products, as well as logistics operations to move products through the supply chain. Products include pepperoni, bacon, beef and pork pizza toppings, pizza crusts, flour and corn tortilla products, appetizers, prepared meals, ethnic foods, soups, sauces, side dishes, meat dishes and processed meats. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world.

RAW MATERIALS AND SOURCES OF SUPPLY

Chicken: The primary raw materials used in our chicken operations are corn and soybean meal used as feed and live chickens raised primarily by independent contract growers. Our vertically-integrated chicken process begins with the grandparent breeder flocks and ends with broilers for processing. Breeder flocks (i.e., grandparents) are raised to maturity in grandparent growing and laying farms where fertile eggs are produced. Fertile eggs are incubated at the grandparent hatchery and produce pullets (i.e., parents). Pullets are sent to breeder houses, and the resulting eggs are sent to our hatcheries. Once chicks have hatched, they are sent to broiler farms. There, contract growers care for and raise the chicks according to our standards, with advice from our technical service personnel, until the broilers reach the desired processing weight. Adult chickens are transported to processing plants, and finished products are sent to distribution centers, then delivered to customers.

We operate our own feed mills to produce scientifically-formulated feeds. In fiscal 2008, corn and soybean meal were major production costs, representing roughly 47% of our cost of growing a live chicken. In addition to feed ingredients to grow the chickens, we use cooking ingredients, packaging materials and cryogenic agents. We believe our sources of supply for these materials are adequate for our present needs, and we do not anticipate any difficulty in acquiring these materials in the future. While we produce nearly all our inventory of breeder chickens and live broilers, from time-to-time we purchase live, ice-packed or deboned chicken to meet production requirements.

Beef: The primary raw materials used in our beef operations are live cattle. We do not have facilities of our own to raise cattle, but have cattle buyers located throughout cattle producing areas who visit feed yards and buy live cattle on the open spot market. These buyers are trained to select high quality animals, and we continually measure their performance. We also enter into various risk-sharing and procurement arrangements with producers to secure a supply of livestock for daily start-up operations at our facilities. We believe the sources of supply of live cattle are adequate for our present needs.

Pork: The primary raw materials used in our pork operations are live hogs. The majority of our live hog supply is obtained through various procurement arrangements with independent producers. We also employ buyers who purchase hogs on a daily basis, generally a few days before the animals are processed. These buyers are trained to select high quality animals, and we continually measure their performance. We believe the sources of supply of live hogs are adequate for our present needs. Additionally, we raise live swine to sell to outside processors and supply a minimal amount of live swine for our own processing needs.

Prepared Foods: The primary raw materials used in our prepared foods operations are commodity based raw materials, including chicken, beef, pork, corn, flour and vegetables. Some of these raw materials are provided by the Chicken, Beef and Pork segments, while others may be purchased from numerous suppliers and manufacturers. We believe the sources of supply of raw materials are adequate for our present needs.

SEASONAL DEMAND

Demand for chicken and beef products generally increases during the spring and summer months and generally decreases during the winter months. Pork and prepared foods products generally experience increased demand during the winter months, primarily due to the holiday season, while demand decreases during the spring and summer months.

CUSTOMERS

Wal-Mart Stores, Inc. accounted for 13.3% of our fiscal 2008 consolidated sales. Sales to Wal-Mart Stores, Inc. were included in the Chicken, Beef, Pork and Prepared Foods segments. Any extended discontinuance of sales to this customer could, if not replaced, have a material impact on our operations. No other single customer or customer group represents more than 10% of fiscal 2008 consolidated sales.

COMPETITION

Our food products compete with those of other national and regional food producers and processors and certain prepared food manufacturers. Additionally, our food products compete in markets around the world.

TYSON FOODS, INC.

We seek to achieve a leading market position for our products via our principal marketing and competitive strategy, which includes:

- identifying target markets for value-added products;
- concentrating production, sales and marketing efforts to appeal to and enhance demand from those markets; and
- utilizing our national distribution systems and customer support services.

Past efforts indicate customer demand can be increased and sustained through application of our marketing strategy, as supported by our distribution systems. The principal competitive elements are price, product safety and quality, brand identification, breadth and depth of the product offering, availability of products, customer service and credit terms.

INTERNATIONAL

We exported to more than 90 countries in fiscal 2008. Major export markets include Canada, Central America, China, the European Union, Japan, Mexico, the Middle East, Russia, South Korea and Taiwan.

We have the following international operations:

- Tyson de Mexico, a Mexican subsidiary, is a vertically-integrated poultry production company;
- Cobb-Vantress, a chicken breeding stock subsidiary, has business interests in Argentina, Brazil, the Dominican Republic, India, Italy, Japan, the Netherlands, Peru, the Philippines, Spain, Sri Lanka, the United Kingdom and Venezuela;
- Godrej Tyson Foods, a majority interest in a poultry processing business in India;
- Tyson Dalong, a majority interest in a chicken further processing facility in China;
- Jiangsu-Tyson, a majority interest in a Chinese poultry breeding company, which will build a fully integrated poultry operation with production expected to begin in fiscal 2010;
- Cactus Argentina, a majority interest in a vertically-integrated beef operation joint venture in Argentina; however, we do not consolidate the entity due to the lack of controlling interest; and
- a technical service agreement with Grupo Melo in Panama to assist Grupo Melo with the production of further processed chicken products and to allow it to license the Tyson brand.

In October 2008, we purchased three poultry companies in southern Brazil, each vertically integrated. These companies include Macedo Agroindustrial, Avicola Itaiopolis and Frangobras.

In June 2008, we executed a letter of intent to sell Lakeside Farm Industries (Lakeside), our Canadian beef operation. Lakeside has a cattle feeding facility, beef carcass production, a boxed beef processing facility, a farming operation and a fertilizer operation. The transaction remains subject to government approvals and the execution of a definitive agreement. Subject to receipt of applicable government approvals, we expect to be ready to close this transaction by the end of the first quarter fiscal 2009. The results of Lakeside are reported as a discontinued operation.

We continue to explore growth opportunities in foreign countries. Additional information regarding export sales, long-lived assets located in foreign countries and income (loss) from foreign operations is set forth in Note 18, "Segment Reporting" of the Notes to Consolidated Financial Statements.

RESEARCH AND DEVELOPMENT

We conduct continuous research and development activities to improve product development, to automate manual processes in our processing plants and growout operations, and to improve chicken breeding stock. In 2007, we opened the Discovery Center, which includes 19 research kitchens and a USDA-inspected pilot plant. The Discovery Center brings new market-leading retail and foodservice products to the customer faster and more effectively.

ENVIRONMENTAL REGULATION AND FOOD SAFETY

Our facilities for processing chicken, beef, pork and prepared foods, milling feed and housing live chickens and swine are subject to a variety of federal, state and local environmental laws and regulations, which include provisions relating to the discharge of materials into the environment and generally provide for protection of the environment. We believe we are in substantial compliance with such applicable laws and regulations and are not aware of any violations of, or pending changes in, such laws and regulations likely to result in material penalties or material increases in compliance costs. The cost of compliance with such laws and regulations has not had a material adverse effect on our capital expenditures, earnings or competitive position, and it is not anticipated to have a material adverse effect in the future.

We work to ensure our products meet high standards of food safety and quality. In addition to our own internal Food Safety and Quality Assurance oversight and review, our chicken, beef, pork and prepared foods products are subject to inspection prior to distribution, primarily by the United States Department of Agriculture (USDA) and the United States Food and Drug Administration (FDA). We are also participants in the government's Hazardous Analysis Critical Control Point (HACCP) program and are subject to the Sanitation Standard Operating Procedures and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

TYSON FOODS, INC.

EMPLOYEES AND LABOR RELATIONS

As of October 31, 2008, excluding our Lakeside discontinued operation, we employed approximately 107,000 employees. Approximately 99,000 employees were employed in the United States and 8,000 employees were in foreign countries, primarily Mexico. Approximately 31,000 employees were subject to collective bargaining agreements with various labor unions, with approximately 10% of those employees included under agreements expiring in fiscal 2009. These agreements expire over periods throughout the next several years. We believe our overall relations with our workforce are good.

MARKETING AND DISTRIBUTION

Our principal marketing objective is to be the primary provider of chicken, beef, pork and prepared foods products for our customers. We identify distinct markets and business opportunities through continuous consumer and market research. Our branding strategy focuses on one national protein brand, the Tyson brand, as well as a number of strong regional brands. All communications stress the quality, convenience and protein power benefits of our products while supporting and building brand awareness. Communication efforts are presently built around the "Thank you" advertising campaign and utilize a fully integrated and coordinated mix of activities designed to connect with customers and consumers on both a rational and emotional level. We utilize our national distribution system and customer support services to achieve the leading market position for our products.

We have the ability to produce and ship fresh, frozen and refrigerated products worldwide. Domestically, our distribution system extends to a broad network of food distributors, which is supported by our owned or leased cold storage warehouses, by public cold storage facilities and by our transportation system. Our distribution centers accumulate fresh and frozen products so we can fill and consolidate less-than-truckload orders into full truckloads, thereby decreasing shipping costs while increasing customer service. In addition, we provide our customers a wide selection of products that do not require large volume orders. Our distribution system enables us to supply large or small quantities of products to meet customer requirements anywhere in the continental United States. Internationally, we utilize both rail and truck refrigerated transportation to domestic ports, where consolidations take place to transport to foreign destinations. We use ocean and air transportation to meet the delivery needs of our foreign customers.

PATENTS AND TRADEMARKS

We have filed a number of patents and trademarks relating to our processes and products that either have been approved or are in the process of application. Because we do a significant amount of brand name and product line advertising to promote our products, we consider the protection of our trademarks to be important to our marketing efforts. We also have developed non-public proprietary information regarding our production processes and other product-related matters. We utilize internal procedures and safeguards to protect the confidentiality of such information and, where appropriate, seek patent and/or trademark protection for the technology we utilize.

INDUSTRY PRACTICES

Our agreements with customers are generally short-term, primarily due to the nature of our products, industry practices and fluctuations in supply, demand and price for such products. In certain instances where we are selling further processed products to large customers, we may enter into written agreements whereby we will act as the exclusive or preferred supplier to the customer, with pricing terms that are either fixed or variable. Due to volatility of raw materials, fixed price contracts are generally limited to three months in duration.

AVAILABILITY OF SEC FILINGS AND CORPORATE GOVERNANCE DOCUMENTS ON INTERNET WEBSITE

We maintain an internet website for investors at <http://ir.tyson.com>. On this website, we make available, free of charge, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to any of those reports, as soon as reasonably practicable after we electronically file such reports with, or furnish to, the Securities and Exchange Commission. Also available on the website for investors are the Corporate Governance Principles, Audit Committee charter, Compensation Committee charter, Governance Committee charter, Nominating Committee charter and Code of Conduct. Our corporate governance documents are available in print, free of charge to any shareholder who requests them.

CAUTIONARY STATEMENTS RELEVANT TO FORWARD-LOOKING INFORMATION FOR THE PURPOSE OF "SAFE HARBOR" PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Certain information in this report constitutes forward-looking statements. Such forward-looking statements include, but are not limited to, current views and estimates of future economic circumstances, industry conditions in domestic and international markets, our performance and financial results, including, without limitation, debt-levels, return on invested capital, value-added product growth, capital expenditures, tax rates, access to foreign markets and dividend policy. These forward-looking statements are subject to a number of factors and uncertainties that could cause our actual results and experiences to differ materially from anticipated results and expectations expressed in such forward-looking statements. We wish to caution readers not to place undue reliance on any forward-looking statements, which speak only as of the date made. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

TYSON FOODS, INC.

Among the factors that may cause actual results and experiences to differ from anticipated results and expectations expressed in such forward-looking statements are the following: (i) fluctuations in the cost and availability of inputs and raw materials, such as live cattle, live swine, feed grains (including corn and soybean meal) and energy; (ii) market conditions for finished products, including competition from other global and domestic food processors, supply and pricing of competing products and alternative proteins and demand for alternative proteins; (iii) successful rationalization of existing facilities and operating efficiencies of the facilities; (iv) risks associated with our commodity trading risk management activities; (v) access to foreign markets together with foreign economic conditions, including currency fluctuations, import/export restrictions and foreign politics; (vi) outbreak of a livestock disease (such as avian influenza (AI) or bovine spongiform encephalopathy (BSE)), which could have an effect on livestock we own, the availability of livestock we purchase, consumer perception of certain protein products or our ability to access certain domestic and foreign markets; (vii) changes in availability and relative costs of labor and contract growers and our ability to maintain good relationships with employees, labor unions, contract growers and independent producers providing us livestock; (viii) issues related to food safety, including costs resulting from product recalls, regulatory compliance and any related claims or litigation; (ix) changes in consumer preference and diets and our ability to identify and react to consumer trends; (x) significant marketing plan changes by large customers or loss of one or more large customers; (xi) adverse results from litigation; (xii) risks associated with leverage, including cost increases due to rising interest rates or changes in debt ratings or outlook; (xiii) compliance with and changes to regulations and laws (both domestic and foreign), including changes in accounting standards, tax laws, environmental laws and occupational, health and safety laws; (xiv) our ability to make effective acquisitions or joint ventures and successfully integrate newly acquired businesses into existing operations; (xv) effectiveness of advertising and marketing programs; (xvi) the effect of, or changes in, general economic conditions; and (xvii) those factors listed under Item 1A. "Risk Factors."

ITEM 1A. RISK FACTORS

These risks, which should be considered carefully with the information provided elsewhere in this report, could materially adversely affect our business, financial condition or results of operations. The risks described below are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or results of operations.

Fluctuations in commodity prices and in the availability of raw materials, especially feed grains, live cattle, live swine and energy could negatively impact our earnings.

Our results of operations and financial condition are dependent upon the cost and supply of raw materials such as feed grains, live cattle, live swine, energy and ingredients, as well as the selling prices for our products, many of which are determined by constantly changing market forces of supply and demand over which we have limited or no control. Corn and soybean meal are major production costs in the poultry industry, representing roughly 47% of our cost of growing a chicken in fiscal 2008. As a result, fluctuations in prices for these feed ingredients, which include competing demand for corn and soybean meal for use in the manufacture of renewable energy, can adversely affect our earnings. Production of feed ingredients is affected by, among other things, weather patterns throughout the world, the global level of supply inventories and demand for grains and other feed ingredients, as well as agricultural and energy policies of domestic and foreign governments.

We have cattle under contract at feed yards owned by third parties; however, most of the cattle we process are purchased from independent producers. We have cattle buyers located throughout cattle producing areas who visit feed yards and buy live cattle on the open spot market. We also enter into various risk-sharing and procurement arrangements with producers who help secure a supply of livestock for daily start-up operations at our facilities. The majority of our live swine supply is obtained through various procurement arrangements with independent producers. We also employ buyers who purchase hogs on a daily basis, generally a few days before the animals are required for processing. In addition, we raise live swine and sell feeder pigs to independent producers for feeding to processing weight and have contract growers feed a minimal amount of company-owned live swine for our own processing needs. Any decrease in the supply of cattle or swine on the spot market could increase the price of these raw materials and further increase per head cost of production due to lower capacity utilization, which could adversely affect our financial results.

Market demand and the prices we receive for our products may fluctuate due to competition from global and domestic food processors.

We face competition from other global, national and regional food producers and processors. The factors on which we compete include:

- price;
- product safety and quality;
- brand identification;
- breadth and depth of the product offering;
- availability of our products;
- customer service; and
- credit terms.

Demand for our products also is affected by competitors' promotional spending, the effectiveness of our advertising and marketing programs and the availability or price of competing proteins.

TYSON FOODS, INC.

We attempt to obtain prices for our products that reflect, in part, the price we must pay for the raw materials that go into our products. If we are not able to obtain higher prices for our products when the price we pay for raw materials increases, we may be unable to maintain positive margins.

Outbreaks of livestock diseases can adversely impact our ability to conduct our operations and demand for our products.

Demand for our products can be adversely impacted by outbreaks of livestock diseases, such as strains of avian influenza and bovine spongiform encephalopathy, which can have a significant impact on our financial results. Efforts are taken to control disease risks by adherence to good production practices and extensive precautionary measures designed to ensure the health of livestock. However, outbreaks of disease and other events, which may be beyond our control, either in our own livestock or cattle and hogs owned by independent producers who sell livestock to us, could significantly affect demand for our products, consumer perceptions of certain protein products, the availability of livestock for purchase by us and our ability to conduct our operations. Moreover, the outbreak of livestock diseases, particularly in our Chicken segment, could have a significant effect on the livestock we own by requiring us to, among other things, destroy any affected livestock. Furthermore, an outbreak of disease could result in governmental restrictions on the import and export of our fresh chicken, beef or other products to or from our suppliers, facilities or customers. This could also result in negative publicity that may have an adverse effect on our ability to market our products successfully and on our financial results.

We are subject to risks associated with our international operations, which could negatively affect our sales to customers in foreign countries, as well as our operations and assets in such countries.

In fiscal 2008, we exported to more than 90 countries. Major export markets include Canada, Central America, China, the European Union, Japan, Mexico, the Middle East, Russia, South Korea and Taiwan. Our export sales for fiscal 2008 totaled \$3.2 billion. In addition, we had approximately \$139 million of long-lived assets located in foreign countries, primarily Mexico, at the end of fiscal 2008. Approximately 22% of income from continuing operations before income taxes for fiscal 2008 was from foreign operations.

As a result, we are subject to various risks and uncertainties relating to international sales and operations, including:

- imposition of tariffs, quotas, trade barriers and other trade protection measures imposed by foreign countries regarding the import of poultry, beef and pork products, in addition to import or export licensing requirements imposed by various foreign countries;
- closing of borders by foreign countries to the import of poultry, beef and pork products due to animal disease or other perceived health or safety issues;
- impact of currency exchange rate fluctuations between the U.S. dollar and foreign currencies, particularly the Canadian dollar, the Mexican peso, the European euro, the British pound sterling, the Brazilian real and the Chinese yuan;
- political and economic conditions;
- difficulties and costs associated with complying with, and enforcing remedies under, a wide variety of complex domestic and international laws, treaties and regulations, including, without limitation, the Foreign Corrupt Practices Act;
- different regulatory structures and unexpected changes in regulatory environments;
- tax rates that may exceed those in the United States and earnings that may be subject to withholding requirements and incremental taxes upon repatriation;
- potentially negative consequences from changes in tax laws; and
- distribution costs, disruptions in shipping or reduced availability of freight transportation.

Occurrence of any of these events in the markets where we operate or in other developing markets could jeopardize or limit our ability to transact business in those markets and could adversely affect our financial results.

We depend on the availability of, and good relations with, our employees.

Excluding our Lakeside discontinued operation, we have approximately 107,000 employees, of whom approximately 31,000 are covered by collective bargaining agreements or are members of labor unions. Our operations depend on the availability and relative costs of labor and maintaining good relations with employees and the labor unions. If we fail to maintain good relations with our employees or with the unions, we may experience labor strikes or work stoppages, which could adversely affect our financial results.

We depend on contract growers and independent producers to supply us with livestock.

We contract primarily with independent contract growers to raise the live chickens processed in our poultry operations. A majority of our cattle and hogs are purchased from independent producers who sell livestock to us under marketing contracts or on the open market. If we do not attract and maintain contracts with our growers, or maintain marketing relationships with independent producers, our production operations could be negatively affected.

If our products become contaminated, we may be subject to product liability claims and product recalls.

Our products may be subject to contamination by disease-producing organisms or pathogens, such as *Listeria monocytogenes*, *Salmonella* and generic *E. coli*. These pathogens are found generally in the environment; therefore, there is a risk they, as a result of food processing, could be present in our products. These pathogens also can be introduced to our products as a result of improper

TYSON FOODS, INC.

handling at the further processing, foodservice or consumer level. These risks may be controlled, but may not be eliminated, by adherence to good manufacturing practices and finished product testing. We have little, if any, control over proper handling procedures once our products have been shipped for distribution. Even an inadvertent shipment of contaminated products may be a violation of law and may lead to increased risk of exposure to product liability claims, product recalls (which may not entirely mitigate the risk of product liability claims), increased scrutiny and penalties, including injunctive relief and plant closings, by federal and state regulatory agencies, and adverse publicity, which could exacerbate the associated negative consumer reaction. Any of these occurrences may have an adverse effect on our financial results.

Our operations are subject to general risks of litigation.

We are involved on an on-going basis in litigation arising in the ordinary course of business or otherwise. Trends in litigation may include class actions involving consumers, shareholders, employees or injured persons, and claims relating to commercial, labor, employment, antitrust, securities or environmental matters. Litigation trends and the outcome of litigation cannot be predicted with certainty and adverse litigation trends and outcomes could adversely affect our financial results.

Our level of indebtedness and the terms of our indebtedness could negatively impact our business and liquidity position.

At September 27, 2008, we had approximately \$2.9 billion of indebtedness outstanding. We had a borrowing capacity of \$1.5 billion, consisting of \$709 million available under our \$1.0 billion revolving credit facility and \$750 million under our accounts receivable securitization facility at September 27, 2008. We expect our indebtedness, including borrowings under our credit agreements, may increase from time to time in the future for various reasons, including fluctuations in operating results, capital expenditures and possible acquisitions, joint ventures or other significant initiatives. Our consolidated indebtedness level could adversely affect our business because:

- it may limit or impair our ability to obtain financing in the future;
- our credit rating could restrict or impede our ability to access capital markets at desired rates and increase our borrowing costs;
- it may reduce our flexibility to respond to changing business and economic conditions or to take advantage of business opportunities that may arise;
- a portion of our cash flow from operations must be dedicated to interest payments on our indebtedness and is not available for other purposes; and
- it may restrict our ability to pay dividends.

In addition, our debt agreements require us to meet specified financial ratios and limit our ability to enter into various transactions. Our ability to meet those financial ratios can be affected by events beyond our control, and there can be no assurance we will meet those ratios. If we default on any of our indebtedness, or if we are unable to obtain necessary liquidity, our indebtedness would be due and payable immediately, and our business could be adversely affected.

An impairment in the carrying value of goodwill could negatively impact our consolidated results of operations and net worth.

Goodwill is initially recorded at fair value and is not amortized, but is reviewed for impairment at least annually or more frequently if impairment indicators are present. In assessing the recoverability of goodwill, we make estimates and assumptions about sales, operating margin growth rates and discount rates based on our budgets, business plans, economic projections, anticipated future cash flows and marketplace data. There are inherent uncertainties related to these factors and management's judgment in applying these factors. Goodwill valuations have been calculated using an income approach based on the present value of future cash flows of each reporting unit. We could be required to evaluate the recoverability of goodwill prior to the annual assessment if we experience disruptions to the business, unexpected significant declines in operating results, divestiture of a significant component of our business or sustained market capitalization declines. These types of events and the resulting analyses could result in goodwill impairment charges in the future. Impairment charges could substantially affect our financial results in the periods of such charges. In addition, impairment charges would negatively impact our financial ratios and could limit our ability to obtain financing in the future. As of September 27, 2008, we had \$2.5 billion of goodwill, which represented approximately 23.1% of total assets.

Domestic and international government regulations could impose material costs.

Our operations are subject to extensive federal, state and foreign laws and regulations by authorities that oversee food safety standards and processing, packaging, storage, distribution, advertising and labeling of our products. Our facilities for processing chicken, beef, pork, prepared foods and milling feed and for housing live chickens and swine are subject to a variety of international, federal, state and local laws relating to the protection of the environment, including provisions relating to the discharge of materials into the environment, and to the health and safety of our employees. Our chicken, beef and pork processing facilities are participants in the HACCP program and are subject to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. In addition, our chicken, beef, pork and prepared foods products are subject to inspection prior to distribution, primarily by the USDA and the FDA. Loss of or failure to obtain necessary permits and registrations could delay or prevent us from meeting current product demand, introducing new products, building new facilities or acquiring new businesses and could adversely affect operating results. Additionally, we are routinely subject to new or modified laws, regulations and accounting standards, such as recently enacted country of origin labeling (COOL) requirements. If we are found to be out of compliance with applicable laws and regulations in these or other areas, we could be subject to civil remedies, including fines, injunctions, recalls or asset seizures, as well as potential criminal

TYSON FOODS, INC.

sanctions, any of which could have an adverse effect on our financial results.

A material acquisition, joint venture or other significant initiative could affect our operations and financial condition.

We have recently completed acquisitions and joint venture agreements and continually evaluate potential acquisitions, joint ventures and other initiatives (collectively, “transactions”), and we may seek to expand our business through the acquisition of companies, processing plants, technologies, products and services from others, which could include material transactions. A material transaction may involve a number of risks, including:

- failure to realize the anticipated benefits of the transaction;
- difficulty integrating acquired businesses, technologies, operations and personnel with our existing business;
- diversion of management attention in connection with negotiating transactions and integrating the businesses acquired;
- exposure to unforeseen or undisclosed liabilities of acquired companies; and
- the need to obtain additional debt or equity financing for any transaction, which, if obtained, could adversely affect our various financial ratios.

We may not be able to address these risks and successfully develop these acquired companies or businesses into profitable units of our company. If we are unable to do this, expansion could adversely affect our financial results.

Market fluctuations could negatively impact our operating results as we hedge certain transactions.

Our business is exposed to fluctuating market conditions. We use derivative financial instruments to reduce our exposure to various market risks including changes in commodity prices, interest rates and foreign exchange rates. We hold certain positions, primarily in grain and livestock futures, that do not qualify as hedges for financial reporting purposes. These positions are marked to fair value, and the unrealized gains and losses are reported in earnings at each reporting date. Therefore, losses on these contracts will adversely affect our reported operating results. While these contracts reduce our exposure to changes in prices for commodity products, the use of such instruments may ultimately limit our ability to benefit from favorable commodity prices.

Deterioration of economic conditions could negatively impact our business.

Our business may be adversely affected by changes in national or global economic conditions, including inflation, interest rates, availability of capital markets, consumer spending rates, energy availability and costs (including fuel surcharges) and the effects of governmental initiatives to manage economic conditions. Any such changes could adversely affect the demand for our beef, poultry and pork products, or the cost and availability of our needed raw materials, cooking ingredients and packaging materials, thereby negatively affecting our financial results.

The recent disruptions in credit and other financial markets and deterioration of national and global economic conditions, could, among other things:

- make it more difficult or costly for us to obtain financing for our operations or investments or to refinance our debt in the future;
- cause our lenders to depart from prior credit industry practice and make more difficult or expensive the granting of any technical or other waivers under our credit agreements to the extent we may seek them in the future;
- impair the financial condition of some of our customers and suppliers thereby increasing customer bad debts or non-performance by suppliers;
- negatively impact global demand for protein products, which could result in a reduction of sales, operating income and cash flows;
- decrease the value of our investments in equity and debt securities, including our marketable debt securities, company-owned life insurance and pension and other postretirement plan assets;
- negatively impact our commodity risk management activities if we are required to record additional losses related to derivative financial instruments in the first quarter of fiscal 2009 if grain prices remain lower than prices at the end of fiscal 2008; or
- impair the financial viability of our insurers.

Changes in consumer preference could negatively impact our business.

The food industry in general is subject to changing consumer trends, demands and preferences. Trends within the food industry change often, and failure to identify and react to changes in these trends could lead to, among other things, reduced demand and price reductions for our products, and could have an adverse effect on our financial results.

The loss of one or more of our largest customers could negatively impact our business.

Our business could suffer significant set backs in sales and operating income if our customers’ plans and/or markets should change significantly, or if we lost one or more of our largest customers, including, for example, Wal-Mart Stores, Inc., which accounted for 13.3% of our sales in fiscal 2008. Many of our agreements with our customers are generally short-term, primarily due to the nature of our products, industry practice and the fluctuation in demand and price for our products.

TYSON FOODS, INC.

The consolidation of customers could negatively impact our business.

Our customers, such as supermarkets, warehouse clubs and food distributors, have consolidated in recent years, and consolidation is expected to continue throughout the United States and in other major markets. These consolidations have produced large, sophisticated customers with increased buying power who are more capable of operating with reduced inventories, opposing price increases, and demanding lower pricing, increased promotional programs and specifically tailored products. These customers also may use shelf space currently used for our products for their own private label products. If we fail to respond to these trends, our volume growth could slow or we may need to lower prices or increase promotional spending for our products, any of which would adversely affect our financial results.

Extreme factors or forces beyond our control could negatively impact our business.

Natural disasters, fire, bioterrorism, pandemic or extreme weather, including droughts, floods, excessive cold or heat, hurricanes or other storms, could impair the health or growth of livestock or interfere with our operations due to power outages, fuel shortages, damage to our production and processing facilities or disruption of transportation channels, among other things. Any of these factors, as well as disruptions in our information systems, could have an adverse effect on our financial results.

Our renewable energy ventures and other initiatives might not be as successful as we expect.

We have been exploring ways to commercialize animal fats and other by-products from our operations, as well as the poultry litter of our contract growers, to generate energy and other value-added products. For example, in fiscal 2007, we announced the formation of Dynamic Fuels, a joint venture with Syntroleum Corporation. We will continue to explore other ways to commercialize opportunities outside our core business, such as renewable energy and other technologically-advanced platforms. These initiatives might not be as financially successful as we initially announced or would expect due to factors that include, but are not limited to, possible discontinuance of tax credits, competing energy prices, failure to operate at the volumes anticipated, abilities of our joint venture partners and our limited experience in some of these new areas.

Members of the Tyson family can exercise significant control.

Members of the Tyson family beneficially own, in the aggregate, 99.97% of our outstanding shares of Class B Common Stock, \$0.10 par value (Class B stock) and 2.31% of our outstanding shares of Class A Common Stock, \$0.10 par value (Class A stock), giving them control of approximately 70% of the total voting power of our outstanding voting stock. In addition, three members of the Tyson family serve on our Board of Directors. As a result, members of the Tyson family have the ability to exert substantial influence or actual control over our management and affairs and over substantially all matters requiring action by our stockholders, including amendments to our restated certificate of incorporation and by-laws, the election and removal of directors, any proposed merger, consolidation or sale of all or substantially all of our assets and other corporate transactions. This concentration of ownership may also delay or prevent a change in control otherwise favored by our other stockholders and could depress our stock price. Additionally, as a result of the Tyson family's significant ownership of our outstanding voting stock, we have relied on the "controlled company" exemption from certain corporate governance requirements of the New York Stock Exchange. Pursuant to these exemptions, our compensation committee, which is made up of independent directors, does not have sole authority to determine the compensation of our executive officers, including our chief executive officer.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None

ITEM 2. PROPERTIES

We have sales offices and production and distribution operations in the following states: Alabama, Arkansas, Arizona, California, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington and Wisconsin. Additionally, we, either directly or through our subsidiaries, have facilities in or participate in joint venture operations in Argentina, Brazil, Canada, China, the Dominican Republic, Hong Kong, India, Italy, Japan, Mexico, the Netherlands, Peru, the Philippines, Russia, South Korea, Spain, Sri Lanka, Taiwan, the United Arab Emirates, the United Kingdom and Venezuela.

TYSON FOODS, INC.

	Number of Facilities		Total
	Owned	Leased	
Chicken Segment:			
Processing plants	51	1	52
Rendering plants	9	-	9
Blending mills	2	-	2
Feed mills	36	-	36
Broiler hatcheries	60	5	65
Breeder houses	310	647	957
Broiler farm houses	512	749	1,261
Beef Segment Production Facilities	12	-	12
Pork Segment Production Facilities	9	-	9
Prepared Foods Segment Processing Plants	24	1	25
Distribution Centers	7	1	8
Cold Storage Facilities	57	-	57

	Capacity per week at September 27, 2008	Fiscal 2008 Average Capacity Utilization
Chicken Processing Plants	44 million head	91%
Beef Production Facilities	173,000 head	82%
Pork Production Facilities	447,000 head	88%
Prepared Foods Processing Plants	51 million pounds	73%

Chicken: Chicken processing plants include various phases of slaughtering, dressing, cutting, packaging, deboning and further-processing. We also have 16 pet food operations, which are part of the Chicken processing plants. The blending mills, feed mills and broiler hatcheries have sufficient capacity to meet the needs of the chicken growout operations.

Beef: Beef plants include various phases of slaughtering live cattle and fabricating beef products. Some also treat and tan hides. The Beef segment includes three case-ready operations that share facilities with the Pork segment. One of the beef facilities contains a tallow refinery. Carcass facilities reduce live cattle to dressed carcass form. Processing facilities conduct fabricating operations to produce boxed beef and allied products.

Pork: Pork plants include various phases of slaughtering live hogs and fabricating pork products and allied products. The Pork segment includes three case-ready operations that share facilities with the Beef segment.

Prepared Foods: Prepared Foods plants process fresh and frozen beef, pork and other raw materials into pizza toppings, branded and processed meats, appetizers, prepared meals, ethnic foods, soups, sauces, side dishes, pizza crusts, flour and corn tortilla products and meat dishes.

We believe our present facilities are generally adequate and suitable for our current purposes; however, seasonal fluctuations in inventories and production may occur as a reaction to market demands for certain products. We regularly engage in construction and other capital improvement projects intended to expand capacity and improve the efficiency of our processing and support facilities.

ITEM 3. LEGAL PROCEEDINGS

Refer to the discussion of our certain legal proceedings pending against us under Part II, Item 8, Notes to Consolidated Financial Statements, Note 21: "Contingencies," which discussion is incorporated herein by reference. Listed below are certain additional legal proceedings for which we are involved.

On October 23, 2001, a putative class action lawsuit styled R. Lynn Thompson, et al. vs. Tyson Foods, Inc. was filed in the District Court for Mayes County, Oklahoma by three property owners on behalf of all owners of lakefront property on Grand Lake O' the Cherokees. Simmons Foods, Inc. and Peterson Farms, Inc. also are defendants. The plaintiffs allege the defendants' operations diminished the water quality in the lake thereby interfering with the plaintiffs' use and enjoyment of their properties. The plaintiffs sought injunctive relief and an unspecified amount of compensatory damages, punitive damages, attorneys' fees and costs. While the District Court certified a class, on October 4, 2005, the Court of Civil Appeals of the State of Oklahoma reversed, holding the plaintiffs' claims were not suitable for disposition as a class action. This decision was upheld by the Oklahoma Supreme Court and the case was remanded to the District Court with instructions that the matter proceed only on behalf of the three named plaintiffs. Plaintiffs seek injunctive relief, restitution and compensatory and punitive damages in an unspecified amount in excess of \$10,000. We and the other defendants have denied liability and asserted various defenses. Defendants have requested a trial date, but the court has not yet scheduled the matter for trial.

TYSON FOODS, INC.

In 2004, representatives of our subsidiary, Tyson Fresh Meats, Inc. (TFM), met with the U.S. Environmental Protection Agency (USEPA) staff to discuss alleged wastewater and late report filing violations under the Clean Water Act relating to the 2002 Second and Final Consent Decree that governed compliance requirements for TFM's Dakota City, Nebraska, facility. TFM vigorously disputed these allegations. The U.S. Department of Justice (DOJ), on behalf of USEPA, recently requested that TFM enter into a tolling agreement concerning possible civil penalties and injunctive relief for Clean Water Act violations, which was executed in July 2008, and enter into negotiations with DOJ and USEPA regarding a potential settlement of this matter. Subsequently, the parties met to discuss the potential for settlement of the alleged violations and DOJ and USEPA demanded \$5,500,000 in penalties. TFM disputes these allegations and is currently in negotiations to settle this matter.

On January 9, 2003, we received a notice of liability letter from Union Pacific Railroad Company ("Union Pacific") relating to our alleged contributions of waste oil to the Double Eagle Refinery Superfund Site in Oklahoma City, Oklahoma. On August 22, 2006, the United States and the State of Oklahoma filed a lawsuit styled United States of America, et al. v. Union Pacific Railroad Co. against Union Pacific in the United States District Court for the Western District of Oklahoma seeking more than \$22 million to remediate the Double Eagle site. Certain Tyson entities joined a "potentially responsible parties" group on October 31, 2006. A settlement between the "potentially responsible parties" group, the United States, and the State of Oklahoma was reached and the Tyson entities paid \$625,586 into escrow towards the settlement of the matter. In furtherance of finalizing the settlement, on June 20, 2008 the DOJ filed a complaint styled United States of America, et al. v. Albert Investment Co., Inc. et al. against numerous alleged responsible parties, including various Tyson entities (the "Litigation"). A proposed Consent Decree addressing all alleged liability of Tyson for the site was lodged on June 27, 2008. On August 15, 2008, Union Pacific submitted to the United States its Comments and Objections to the proposed Consent Decree. On October 10, 2008, Union Pacific initiated litigation to challenge the proposed Consent Decree by filing a Motion to intervene in the Litigation. It is unclear whether Union Pacific will be allowed to intervene in the Litigation. If the proposed Consent Decree is entered, the escrowed amount will be paid to the United States and the State of Oklahoma.

In August 2004, we received a subpoena requesting the production of documents from a federal grand jury sitting in the Western District of Arkansas. The subpoena focused on events surrounding a workplace accident on October 10, 2003, that resulted in the death of one of our employees at the River Valley Animal Foods rendering plant in Texarkana, Arkansas. That workplace fatality had previously been the subject of an investigation by the Occupational Health and Safety Administration (OSHA) of the Department of Labor. On April 9, 2004, OSHA issued citations to us and our subsidiary Tyson Poultry, Inc., d/b/a River Valley Animal Foods, alleging violations of health and safety standards arising from the death of the employee due to hydrogen sulfide inhalation. The citations consist of five willful, 12 serious and two recordkeeping violations. OSHA seeks abatement of the alleged violations and proposed penalties of \$436,000. The OSHA proceeding was stayed pending the completion of the grand jury investigation. On July 14, 2008, we received a letter from the United States Attorney's office in the Western District of Arkansas, in which the DOJ and the DOL claimed that we willfully violated OSHA regulations resulting in the death of an employee, and that certain of our employees or agents, acting in the course of their employment, had made false statements to OSHA compliance officers. The letter also expressed concern that our agents may have withheld documents in the course of the OSHA investigation, thereby subjecting us to liability for obstruction of justice. On September 26, 2008, we entered into a tolling agreement with the United States Attorney's Office which suspended the running of the statute of limitations until January 9, 2009 for any legal action arising from the events that the federal government might initiate, either criminal or civil.

TYSON FOODS, INC.

On April 2, 2002, four former employees of our Shelbyville, Tennessee, chicken processing plant filed a putative class action complaint styled *Trollinger et al. v. Tyson Foods, Inc.* in the U.S. District Court for the Eastern District of Tennessee against us alleging that we, in conjunction with employment agencies and recruiters, engaged in a scheme to hire illegal immigrant workers in 15 of its processing plants to depress wages paid to hourly wage employees at those plants in violation of the federal Racketeer Influenced and Corrupt Practices Act (RICO). On July 16, 2002, the District Court dismissed the case. Following appeal, on June 3, 2004 the Sixth Circuit Court of Appeals reversed the District Court's dismissal decision and remanded the case for further proceedings. Discovery has been ongoing since September 2004. In June 2005, the plaintiffs filed a second amended complaint which included different plaintiffs, narrowed the list of plants at issue to eight and added an allegation that we conspired with certain Hispanic civil rights groups to hire illegal immigrant workers. In addition, the second amended complaint added as defendants John Tyson, Richard Bond, Greg Lee, Archibald Schaffer III, Kenneth Kimbro, Karen Percival, Tim McCoy and Ahrazue Wilt, all of whom are current or former officers or managers of the Company. On August 5, 2005, plaintiffs sought certification of a putative class of all hourly wage employees at the eight Company plants since 1998 who were legally authorized to be employed in the United States. On October 10, 2006, the District Court granted plaintiffs' motion for class certification. On October 24, 2006, defendants filed with the Sixth Circuit Court of Appeals a petition for interlocutory review of the District Court's class certification decision. On February 13, 2008, the District Court granted the Company's and the individual defendants' motions for summary judgment, dismissing the plaintiffs' claims with prejudice. The plaintiffs filed a motion for reconsideration on February 28, 2008, that was denied by the District Court on April 22, 2008. The plaintiffs have filed with the Sixth Circuit Court of Appeals a petition for review of the District Court's granting of our summary judgment motion. The Stipulation to Dismiss the petition for review was entered on October 26, 2008, and all pending matters before the District Court have been withdrawn by the defendants.

In November 2006, the Audit Committee of our Board of Directors engaged outside counsel to conduct a review of certain payments that had been made by one of our subsidiaries in Mexico, including payments to individuals employed by Mexican governmental bodies. The payments were discontinued in November 2006. Although the review process is ongoing, we believe the amount of these payments is immaterial, and we do not expect any material impact to our financial statements. We have contacted the Securities and Exchange Commission and the U.S. Department of Justice to inform them of our review and preliminary findings and are cooperating fully with these governmental authorities.

We currently have pending thirteen (13) separate lawsuits alleging that Tyson falsely advertised chicken products as "raised without antibiotics" in violation of various state consumer protection statutes (*Curtsail v. Tyson*, .08CV01643 (D. Md.); *Cohen v. Tyson*, 4:08CV0366 (E.D. Ark.); *Wright v. Tyson*, 08CV3022 (D. N.J.); *Wilson v. Tyson*, 4:08CV0587 (E.D. Ark.); *Gupton v. Tyson*, 4:08CV0588 (E.D. Ark.); *Kranish v. Tyson*, 08CV01619 (D. Md.); *Latimer v. Tyson*, 4:08CV004051 (W.D. Ark.); *Zukowosky v. Tyson*, 4:08CV0584 (E.D. Ark.); *Bickerd v. Tyson*, 08CV1796 (D. Md.); *Court v. Tyson*, 08CV03592 (W.D. Wash.); *Epstein v. Tyson*, 08CV2800 (N.D. Cal.); *Johnson v. Tyson*, 08CV291 (D. Idaho); *Mize v. Tyson*, 08CV4051 (W.D. Ark.)) Plaintiffs in each of these cases seek to pursue claims on behalf of themselves and proposed classes of other similarly situated consumers. Plaintiffs in each of these cases seek compensatory and punitive damages in an unspecified amount in excess of \$5,000,000. Plaintiffs in two of these cases, *Curtsail v. Tyson* and *Cohen v. Tyson*, petitioned the Judicial Panel on Multidistrict Litigation to transfer all of these actions to a single court for consolidated or coordinated pretrial proceedings pursuant to 28 U.S.C. 1407. On October 17, 2008, the Judicial Panel granted the multidistrict litigation petitions and transferred the pending cases to the District of Maryland. A trial date has not been set.

Between 2003 and 2005, eight lawsuits were brought against Tyson and several other poultry companies by approximately 140 plaintiffs in Washington County, Arkansas Circuit Court (*Green v. Tyson Foods, Inc.*, et al., *Bible v. Tyson Foods, Inc.*, *Beal v. Tyson Foods, Inc.*, et al., *McWhorter v. Tyson Foods, Inc.*, et al., *McConnell v. Tyson Foods, Inc.*, et al., *Carroll v. Tyson Foods, Inc.*, et al., *Belew v. Tyson Foods, Inc.*, et al., and *Gonzalez v. Tyson Foods, Inc.*, et al.) alleging that the land application of poultry litter caused arsenic and pathogenic mold and fungi contamination of the air, soil and water in and around Prairie Grove, Arkansas. In addition to the poultry company defendants, plaintiffs sued Alpharma, the manufacturer of a feed ingredient containing an organic arsenic compound that has been used in the broiler industry. Plaintiffs are seeking recovery for several types of personal injuries, including several forms of cancer. On August 2, 2006, the Court granted summary judgment in favor of Tyson and the other poultry company defendants in the first case to go to trial and denied summary judgment as to Alpharma. The case was tried against Alpharma and the jury returned a verdict in favor of Alpharma. Plaintiffs appealed the summary judgment in favor of the poultry company defendants and the Court stayed the remaining seven lawsuits pending the appeal. On May 8, 2008, the Arkansas Supreme Court reversed the summary judgment in favor of the poultry company defendants. The first case will proceed to trial against the poultry company defendants in April 2009.

Other Matters: We currently have approximately 107,000 employees and, at any time, have various employment practices matters outstanding. In the aggregate, these matters are significant to the Company, and we devote significant resources to managing employment issues. Additionally, we are subject to other lawsuits, investigations and claims (some of which involve substantial amounts) arising out of the conduct of our business. While the ultimate results of these matters cannot be determined, they are not expected to have a material adverse effect on our consolidated results of operations or financial position.

TYSON FOODS, INC.**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

Not applicable.

EXECUTIVE OFFICERS OF THE COMPANY

Our Officers serve one year terms from the date of their election, or until their successors are appointed and qualified. No family relationships exist among these officers. The name, title, age and year of initial election to executive office of our executive officers are listed below:

Name	Title	Age	Year Elected
Richard L. Bond	President and Chief Executive Officer	61	2001
Richard A. Greubel, Jr.	Group Vice President and International President	46	2007
Craig J. Hart	Senior Vice President, Controller and Chief Accounting Officer	52	2004
Donnie D. King	Group Vice President, Refrigerated & Deli	46	2007
Dennis Leatherby	Executive Vice President and Chief Financial Officer	48	1994
Bernard Leonard	Group Vice President, Food Service	56	2007
James V. Lochner	Senior Group Vice President, Fresh Meats and Margin Optimization	56	2005
Donnie Smith	Group Vice President, Consumer Products	49	2008
David L. Van Bebber	Executive Vice President and General Counsel	52	2008

Richard L. Bond was appointed President and Chief Executive Officer in May 2006, after serving as President and Chief Operating Officer since 2003 and Co-Chief Operating Officer and Group President, Fresh Meats and Retail since 2001. Mr. Bond was initially employed by IBP, inc. (IBP) in 1980. IBP merged into a wholly-owned subsidiary of the Company on September 28, 2001. Mr. Bond is also a member of our Board of Directors.

Richard A. Greubel, Jr. was appointed Group Vice President and International President in May 2007, after serving as Group Vice President, International since August 2006, and President and Managing Director for Monsanto's Brazil business since 2001.

Craig J. Hart was appointed Senior Vice President, Controller and Chief Accounting Officer in September 2004 after serving as Vice President of Special Projects since 2001. Mr. Hart was initially employed by IBP in 1978.

Donnie D. King was appointed Group Vice President, Refrigerated and Deli in September 2008, after serving as Group Vice President, Poultry and Prepared Foods Operations since March 2007, Senior Vice President, Consumer Products Operations since March 2006 and Senior Vice President, Food Service Poultry Operations since September 2003. Mr. King was initially employed by the Company in 1982.

Dennis Leatherby was appointed Executive Vice President and Chief Financial Officer in June 2008 after serving as Senior Vice President, Finance and Treasurer since 1998. He also served as Interim Chief Financial Officer from July 2004 to June 2006. Mr. Leatherby was initially employed by the Company in 1990.

Bernard Leonard was appointed Group Vice President, Food Service in November 2006, after serving as Senior Vice President, National Accounts since 2000. Mr. Leonard was initially employed by Hudson Foods in 1993. Hudson Foods was acquired by the Company in 1998.

James V. Lochner was appointed Senior Group Vice President, Fresh Meats and Margin Optimization in May 2006, after serving as Senior Group Vice President, Margin Optimization, Purchasing and Logistics since October 2005, Group Vice President, Purchasing, Travel, and Aviation since November 2004 and Group Vice President, Fresh Meats since 2001. Mr. Lochner was initially employed by IBP in 1983.

Donnie Smith was appointed Group Vice President of Consumer Products in January 2008, after serving as Group Vice President of Logistics and Operations Services since April 2007, Senior Vice President Information Systems, Purchasing and Distribution since May 2006, Senior Vice President and Chief Information Officer since November 2005, and Senior Vice President, Supply Chain Management since October 2001. Mr. Smith was initially employed by the Company in 1980.

David L. Van Bebber was appointed Executive Vice President and General Counsel in May 2008, after serving as Senior Vice President and Deputy General Counsel since September 2004 and Senior Vice President, Legal Services since November 2000. Mr. Van Bebber was initially employed by Lane Processing in 1982. Lane Processing was acquired by the Company in 1986.

TYSON FOODS, INC.**PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

We have issued and outstanding two classes of capital stock, Class A stock and Class B stock. Holders of Class B stock may convert such stock into Class A stock on a share-for-share basis. Holders of Class B stock are entitled to 10 votes per share while holders of Class A stock are entitled to one vote per share on matters submitted to shareholders for approval. As of October 25, 2008, there were approximately 34,000 holders of record of our Class A stock and 10 holders of record of our Class B stock, excluding holders in the security position listings held by nominees.

DIVIDENDS

Cash dividends cannot be paid to holders of Class B stock unless they are simultaneously paid to holders of Class A stock. The per share amount of the cash dividend paid to holders of Class B stock cannot exceed 90% of the cash dividend simultaneously paid to holders of Class A stock. We have paid uninterrupted quarterly dividends on common stock each year since 1977 and expect to continue our cash dividend policy during fiscal 2009. In both fiscal 2008 and 2007, the annual dividend rate for Class A stock was \$0.16 per share and the annual dividend rate for Class B stock was \$0.144 per share.

MARKET INFORMATION

The Class A stock is traded on the New York Stock Exchange under the symbol "TSN." No public trading market currently exists for the Class B stock. The high and low closing sales prices of our Class A stock for each quarter of fiscal 2008 and 2007 are represented in the table below.

	Fiscal 2008		Fiscal 2007	
	High	Low	High	Low
First Quarter	\$ 18.53	\$ 14.11	\$ 17.00	\$ 14.20
Second Quarter	16.95	13.26	19.41	15.73
Third Quarter	19.44	13.68	24.08	19.62
Fourth Quarter	17.07	12.14	23.91	17.85

ISSUER PURCHASES OF EQUITY SECURITIES

The table below provides information regarding our purchases of Class A stock during the periods indicated.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs (1)
June 29 to July 26, 2008	105,915	\$15.13	-	22,474,439
July 27 to Aug. 30, 2008	165,453	16.15	-	22,474,439
Aug. 31 to Sept. 27, 2008	52,162	14.05	-	22,474,439
Total	(2) 323,530	\$15.48	-	22,474,439

- (1) On February 7, 2003, we announced our board of directors approved a plan to repurchase up to 25 million shares of Class A stock from time to time in open market or privately negotiated transactions. The plan has no fixed or scheduled termination date.
- (2) We purchased 323,530 shares during the period that were not made pursuant to our previously announced stock repurchase plan, but were purchased to fund certain company obligations under our equity compensation plans. These transactions included 247,102 shares purchased in open market transactions and 76,428 shares withheld to cover required tax withholdings on the vesting of restricted stock.

TYSON FOODS, INC.

ITEM 6. SELECTED FINANCIAL DATA

FIVE-YEAR FINANCIAL SUMMARY

in millions, except per share and ratio data

	2008	2007	2006	2005	2004
Summary of Operations					
Sales	\$26,862	\$25,729	\$24,589	\$24,801	\$25,192
Operating income (loss)	331	613	(50)	655	733
Net interest expense	206	224	238	227	275
Income (loss) from continuing operations	86	268	(174)	314	285
Income (loss) from discontinued operation	-	-	(17)	58	118
Cumulative effect of change in accounting principle	-	-	(5)	-	-
Net income (loss)	86	268	(196)	372	403
Diluted earnings (loss) per share:					
Income (loss) from continuing operations	0.24	0.75	(0.51)	0.88	0.80
Income (loss) from discontinued operation	-	-	(0.05)	0.16	0.33
Cumulative effect of change in accounting principle	-	-	(0.02)	-	-
Net income (loss)	0.24	0.75	(0.58)	1.04	1.13
Dividends per share:					
Class A	0.160	0.160	0.160	0.160	0.160
Class B	0.144	0.144	0.144	0.144	0.144
Balance Sheet Data					
Total assets	\$10,850	\$10,227	\$11,121	\$10,504	\$10,464
Total debt	2,896	2,779	3,979	2,995	3,362
Shareholders' equity	5,014	4,731	4,440	4,671	4,292
Other Key Financial Measures					
Depreciation and amortization	\$493	\$514	\$517	\$501	\$490
Capital expenditures	425	285	531	571	486
Return on invested capital	4.3%	7.7%	(0.6)%	8.6%	9.6%
Effective tax rate	44.6%	34.6%	35.0%	28.7%	37.7%
Total debt to capitalization	36.6%	37.0%	47.3%	39.1%	43.9%
Book value per share	\$13.28	\$13.31	\$12.51	\$13.19	\$12.19
Closing stock price high	19.44	24.08	18.70	19.47	21.06
Closing stock price low	12.14	14.20	12.92	14.12	12.59

Notes to Five-Year Financial Summary

- a. Fiscal 2008 includes \$76 million of pretax charges related to: restructuring a beef operation; closing a poultry plant; asset impairments for packaging equipment, intangible assets, unimproved real property and software; flood damage; and severance charges. Additionally, fiscal 2008 includes an \$18 million non-operating gain related to the sale of an investment.
- b. Fiscal 2007 includes tax expense of \$17 million related to a fixed asset tax cost correction, primarily related to a fixed asset system conversion in 1999.
- c. Fiscal 2006 includes \$63 million of pretax charges primarily related to closing one poultry plant, two beef plants and two prepared foods plants.
- d. Fiscal 2005 includes \$33 million of pretax charges related to a legal settlement involving our live swine operations, a non-recurring income tax net benefit of \$15 million including benefit from the reversal of certain income tax reserves, partially offset by an income tax charge related to the one-time repatriation of foreign income under the American Jobs Creation Act and \$14 million of pretax charges primarily related to closing two poultry plants and one prepared foods plant. Additionally, the effective tax rate was affected by the federal income tax effect of the Medicare Part D subsidy in fiscal 2005 of \$55 million because this amount was not subject to federal income tax.
- e. Fiscal 2004 includes \$61 million of pretax BSE-related charges, \$40 million of pretax charges primarily related to closing one poultry and three prepared foods operations, \$25 million of pretax charges related to the impairment of intangible assets and \$21 million of pretax charges related to fixed asset write-downs.
- f. Fiscal 2004 was a 53-week year, while the other years presented were 52-week years.
- g. Return on invested capital is calculated by dividing operating income (loss) by the sum of the average of beginning and ending total debt and shareholders' equity.
- h. The 2006 total debt to capitalization ratio is not adjusted for the \$750 million short-term investment we had on deposit at September 30, 2006. When adjusted for the \$750 million short-term investment, the debt to capitalization ratio was 42.1%.
- i. In June 2008, we executed a letter of intent to sell the beef processing, cattle feed yard and fertilizer assets of Lakeside Farm Industries Ltd. We are reporting Lakeside as a discontinued operation for all periods presented.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

DESCRIPTION OF THE COMPANY

We are the world's largest meat company and the second-largest food production company in the *Fortune* 500 with one of the most recognized brand names in the food industry. We produce, distribute and market chicken, beef, pork, prepared foods and related allied products. Our operations are conducted in four segments: Chicken, Beef, Pork and Prepared Foods. Some of the key factors that influence our business are customer demand for our products, ability to maintain and grow relationships with customers and introduce new and innovative products to the marketplace, accessibility of international markets, market prices for our chicken, beef and pork products, cost of live cattle and hogs, raw materials and grain and operating efficiencies of our facilities.

OVERVIEW

- Chicken Segment – Fiscal 2008 operating results declined as compared to fiscal 2007 due largely to increased input costs of approximately \$900 million, including increased grain costs, other feed ingredient costs and cooking ingredients. These increases were partially offset by increased average sales prices, as well as increased net gains of \$127 million from our commodity risk management activities related to grain purchases, which exclude the impact from related physical purchase transactions that will impact future period operating results.
- Beef Segment – Fiscal 2008 operating results improved compared to fiscal 2007 as operating margins significantly improved in the latter half of the year, with an operating margin of 2.8% in the last six months of fiscal 2008. While sales volume was down with the closure of our Emporia, Kansas, slaughter operation, operating margins improved due to improved average sales prices and operational efficiencies.
- Pork Segment – We achieved record operating income of \$280 million, an increase of \$135 million as compared to fiscal 2007, due to adequate hog supplies and strong domestic and export demand.
- Prepared Foods Segment – Declines in operating income for fiscal 2008 compared to fiscal 2007 for our Prepared Foods segment were primarily due to increased raw material costs, partially offset by increased average sales prices.
- Acquisitions – In fiscal 2008, we announced the following transactions:
 - In December 2007, Cobb-Vantress, Inc. (Cobb), our wholly-owned poultry breeding subsidiary, formed an alliance with Hendrix Genetics B.V. (Hendrix). This alliance will strengthen Cobb's position in the broiler breeding industry, Hendrix' position in egg layer, turkey and swine genetics, and enable Cobb and Hendrix to explore other joint venture opportunities. In July 2008, Cobb acquired the Hybro poultry breeding and genetics business from Hendrix. The acquisition included genetic lines and facilities. At the same time, Cobb and Hendrix signed a Joint Development Agreement involving their respective Research & Development in livestock genetics.
 - In February 2008, we signed an agreement with the Jiangsu Jinghai Poultry Industry Group Co., Ltd., a Chinese poultry breeding company, to build a fully integrated poultry operation in Haimen City near Shanghai. The joint venture, Jiangsu Tyson Foods, will produce fresh, packaged chicken products that will be sold under the Tyson name. Jiangsu Tyson will become the first producer to deliver brand name, high quality fresh chicken to consumers in the eastern China market. We own 70 percent of the business and production is expected to begin in 2009.
 - In June 2008, we announced the acquisition of 51% ownership of Godrej Foods, Ltd., a poultry processing business in India. The joint venture is called Godrej Tyson Foods. We anticipate annual sales of approximately \$50 million initially, and expect operations will expand later. Godrej Foods currently sells retail fresh and further processed chicken.
 - In September 2008, we announced a joint venture agreement was finalized with Shandong Xinchang Group, a vertically integrated poultry operation in eastern China. Once the agreement receives the necessary government approvals, which is expected in fiscal 2009, Tyson will have a 60% ownership. The joint venture will be called Shandong Tyson Xinchang Foods Company.
 - In September 2008, we signed purchase agreements with three poultry companies in southern Brazil, each vertically integrated. These companies include Macedo Agroindustrial, Avicola Itaipolis and Frangobras. We closed on each of these transactions subsequent to fiscal 2008.
- In June 2008, we executed a letter of intent to sell Lakeside Farm Industries (Lakeside), our Canadian beef operation, to XL Foods, Inc., a Canadian-owned beef processing business. Under the terms of the letter of intent, Tyson will sell Lakeside for \$104 million and retain the finished product inventory, accounts receivable and accounts payable of Lakeside as of the closing date. XL Foods will pay an additional amount for cattle inventory, fertilizer inventory and packaging assets, estimated to approximate \$82 million. The transaction remains subject to government approvals and execution of a definitive agreement by the parties. The results of Lakeside are reported as a discontinued operation.
- See Liquidity and Capital Resources for a summary of the impact of recent deterioration of credit and capital markets on our business.

TYSON FOODS, INC.

	in millions, except per share data		
	2008	2007	2006
Net income (loss)	\$ 86	\$ 268	\$ (196)
Net income (loss) per diluted share	0.24	0.75	(0.58)

2008 – Net income includes the following items:

- \$33 million of charges related to asset impairments, including packaging equipment, intangible assets, unimproved real property and software;
- \$17 million charge related to restructuring our Emporia, Kansas, beef operation;
- \$13 million charge related to closing our Wilkesboro, North Carolina, Cooked Products poultry plant;
- \$13 million of charges related to flood damage at our Jefferson, Wisconsin, plant and severance charges related to the FAST initiative; and
- \$18 million non-operating gain related to sale of an investment.

2007 – Net income includes the following item:

- \$17 million of tax expense related to a fixed asset tax cost correction, primarily related to a fixed asset system conversion in 1999.

2006 – Net loss includes the following items:

- \$63 million of costs related to beef, prepared foods and poultry plant closings;
- \$19 million of charges related to our Cost Management Initiative and other business consolidation efforts which included severance expense, product rationalization costs and related intangible asset impairment expenses;
- \$15 million tax expense resulting from a review of our tax account balances; and
- \$5 million charge related to the cumulative effect of a change in accounting principle due to adoption of Financial Accounting Standards Board Interpretation No. 47, "Accounting for Conditional Asset Retirement Obligations," an interpretation of FASB Statement No. 143 (FIN 47).

OUTLOOK

The following elements comprise our long-term strategic plan:

- Create innovative and insight-driven food solutions: Discover and sell market-leading products and services to grow Tyson's brand equity and help our customers succeed through our commitment to joint value creation.
- Optimize commodity business models: Emphasize cost focus in operations, manage margins and maximize revenue by capitalizing on scale, yield, pricing, product mix and services.
- Build a multi-national enterprise: Accelerate expansion in cost competitive regions and markets with the greatest growth potential as well as increase and diversify United States exports.
- Revolutionize conversion of raw materials and by-products into high-margin initiatives: Commercialize opportunities outside the core business, such as renewable energy from fat and developing other technologically-advanced platforms from materials such as feathers, viscera, blood and animal waste.

Our outlook for segments in fiscal 2009 includes:

- Chicken – Export markets, credit availability and the recent strengthening dollar have negatively impacted leg quarter pricing. International leg quarter sales will be difficult at least through the beginning of fiscal 2009. We have seen grain prices drop significantly from all-time highs this past summer that if sustained, will benefit us in the long run. However, we have some grain positions that could negatively impact us depending on corn and soybean meal closing prices at the end of the first quarter fiscal 2009.
- Beef – We expect cattle supplies will be down 1-2% in fiscal 2009, but there should be ample supply to run our plants efficiently. We will continue to focus on the operational efficiencies from fiscal 2008 and expect a successful fiscal 2009.
- Pork – While we anticipate fewer hog supplies in fiscal 2009, we expect we will have an adequate supply to achieve good operating results. This segment should continue to do well in fiscal 2009, but likely not at the record amounts we had in fiscal 2008.
- Prepared Foods – High input costs will likely continue in fiscal 2009. Demand for our products remains strong, which should provide for sales volume growth in fiscal 2009.

TYSON FOODS, INC.

SUMMARY OF RESULTS – CONTINUING OPERATIONS

Sales	in millions		
	2008	2007	2006
Sales	\$ 26,862	\$ 25,729	\$ 24,589
Change in average sales price	5.1%	5.8%	
Change in sales volume	(0.7)%	(1.1)%	
Sales growth	4.4%	4.6%	

2008 vs. 2007 –

- The improvement in sales was largely due to improved average sales prices, which accounted for an increase of approximately \$1.5 billion. While all segments had improved average sales prices, the majority of the increase was driven by increases in the Chicken and Beef segments.
- Sales were negatively impacted by a decrease in sales volume, which accounted for a decrease of approximately \$318 million. This was primarily due to a decrease in Beef volume and the sale of two poultry production facilities in fiscal 2007, partially offset by an increase in Pork volume.

2007 vs. 2006 –

- The improvement in sales was largely due to improved average sales prices, which accounted for an increase of approximately \$1.4 billion in sales. The improvement was due to better market conditions in all segments, with the majority of the increase attributable to the Chicken and Beef segments.
- Sales were negatively impacted by a slight decrease in sales volume, which accounted for a decrease of approximately \$226 million. The decrease was driven by decreases in the Chicken and Prepared Foods segments, offset by improvements in the Beef and Pork segments. The decrease included planned production cuts and the closure of production facilities, offset by improvements in the beef and pork export markets and improved domestic pork demand.

Cost of Sales	in millions		
	2008	2007	2006
Cost of sales	\$ 25,616	\$ 24,300	\$ 23,639
Gross margin	\$ 1,246	\$ 1,429	\$ 950
Cost of sales as a percentage of sales	95.4%	94.4%	96.1%

2008 vs. 2007 –

- Cost of sales increased \$1.3 billion. Cost per pound contributed to a \$1.6 billion increase, offset partially by a decrease in sales volume reducing cost of sales \$323 million.
 - Increase of over \$1.0 billion in costs in the Chicken segment, which included increased input costs of approximately \$900 million, including grain costs, other feed ingredient costs and cooking ingredients. Plant costs, including labor and logistics, increased by approximately \$200 million. These increases were partially offset by increased net gains of \$127 million from our commodity risk management activities related to grain purchases, which exclude the impact from related physical purchase transactions that will impact future period operating results.
 - Increase in average domestic live cattle costs of approximately \$271 million.
 - Increase in operating costs in the Beef and Pork segments of approximately \$180 million.
 - Decrease due to sales volume included lower Beef and Chicken sales volume, partially offset by higher Pork sales volume.
 - Decrease due to net gains of \$173 million from our commodity risk management activities related to forward futures contracts for live cattle and hog purchases as compared to the same period of fiscal 2007. These amounts exclude the impact from related physical purchase transactions, which will impact future period operating results.
 - Decrease in average live hog costs of approximately \$117 million.

2007 vs. 2006 –

- Decrease in cost of sales as a percentage of sales primarily was due to the increase in average sales prices, while average live prices and production costs did not increase at the same rate.
- Cost of sales increased by \$661 million, with an increase in cost per pound contributing to an \$853 million increase, offset by a decrease in sales volume reducing cost of sales by \$192 million.
 - Increase in net grain costs of \$256 million, which included \$334 million of increased grain costs, partially offset by increased net gains of \$78 million from our commodity risk management activities related to grain purchases.
 - Increase in average domestic live cattle and hog costs, as well as an increase in domestic pork sales volume, increased cost of sales by approximately \$682 million.
 - Decrease in Chicken segment sales volume decreased cost of sales by approximately \$346 million, primarily due to planned production cuts, the sale of two poultry plants and the closure of a poultry plant in fiscal 2006 due to a fire.

TYSON FOODS, INC.

Selling, General and Administrative	in millions		
	2008	2007	2006
Selling, general and administrative	\$ 879	\$ 814	\$ 930
As a percentage of sales	3.3%	3.2%	3.8%

2008 vs. 2007 –

- Increase of \$29 million related to unfavorable investment returns on company-owned life insurance, which is used to fund non-qualified retirement plans.
- Increase of \$16 million related to advertising and sales promotions.
- Increase of \$14 million due to a favorable actuarial adjustment related to retiree healthcare plan recorded in fiscal 2007.
- Increase of \$9 million due to a gain recorded in fiscal 2007 on the disposition of an aircraft.

2007 vs. 2006 –

- Decrease of \$39 million in advertising and sales promotion expenses.
- Decrease of \$27 million due to a favorable actuarial adjustment related to retiree healthcare plan recorded in fiscal 2007 compared to an unfavorable adjustment recorded in fiscal 2006.
- Decrease of \$15 million in other professional fees.
- Decrease of \$18 million due to a gain recorded in fiscal 2007 on the disposition of an aircraft, as well as favorable investment returns on company-owned life insurance.
- We had various other savings recognized as part of our Cost Management Initiative. These savings are in addition to some of the decreases above and include management salaries, travel, relocation and recruiting, personnel awards, as well as other various savings.
- Increase of \$18 million in earnings-based incentive compensation.

Other Charges	in millions		
	2008	2007	2006
	\$ 36	\$ 2	\$ 70

2008 –

- Included \$17 million charge related to restructuring our Emporia, Kansas, beef operation.
- Included \$13 million charge related to closing our Wilkesboro, North Carolina, Cooked Products poultry plant.
- Included \$6 million of severance charges related to the FAST initiative.

2006 –

- Included \$47 million of charges related to closing our Norfolk and West Point, Nebraska, operations.
- Included \$14 million of charges related to closing our Independence and Oelwein, Iowa, operations.
- Included \$9 million of severance accruals related to our Cost Management Initiative announced in July 2006.

Interest Income	in millions		
	2008	2007	2006
	\$ 9	\$ 8	\$ 30

2006 – Included \$20 million of interest earned on the \$750 million short-term investment held on deposit with a trustee used for the repayment of the 7.25% Notes maturing on October 1, 2006.

Interest Expense	in millions		
	2008	2007	2006
Interest expense	\$ 215	\$ 232	\$ 268
Average borrowing rate	7.0%	7.4%	7.4%
Change in average weekly debt	(1.7)%	(15.9)%	

2007 vs. 2006 – The decrease in interest expense primarily was due to the \$1.0 billion senior unsecured notes borrowing at the end of the second quarter of fiscal 2006. We used \$750 million of the proceeds from the borrowing for the repayment of the 7.25% Notes maturing on October 1, 2006.

Other Income, net	in millions		
	2008	2007	2006
	\$ 29	\$ 21	\$ 20

2008 –

- Included \$18 million non-operating gain related to the sale of an investment.

2007 –

- Included \$14 million in foreign currency exchange gain.

2006 –

- Included \$7 million gain recorded on the write-off of a capital lease obligation related to a legal settlement.
- Included \$5 million in foreign currency exchange gain.

Effective Tax Rate

	2008	2007	2006
	44.6%	34.6%	35.0%

2008 –

- Increased the effective tax rate 5.0% due to increase in state valuation allowances.
- Increased the effective tax rate 4.4% due to increase in FIN 48 unrecognized tax benefits.
- Increased the effective tax rate 3.8% due to net negative returns on company-owned life insurance policies, which is not deductible for federal income tax purposes.
- Reduced the effective tax rate 3.8% due to general business credits.

2007 –

- Increased the effective tax rate 4.2% due to a fixed asset tax cost correction, primarily related to a fixed asset system conversion in 1999.
- Increased the effective tax rate 3.2% due to the federal income tax effect of the reductions in estimated Medicare Part D subsidy in fiscal 2007, which is not deductible for federal income tax purposes.
- Reduced the effective tax rate 4.6% due to the reduction of income tax reserves based on favorable settlement of disputed matters.

2006 –

- Reduced the effective tax rate 5.1% due to expense recorded in fiscal 2006 as a result of the tax account balance review.
- Reduced the effective tax rate 1.8% due to the federal income tax effect of the reductions in estimated Medicare Part D subsidy in fiscal 2006, which is not deductible for federal income tax purposes.

TYSON FOODS, INC.**SEGMENT RESULTS**

We operate in four segments: Chicken, Beef, Pork and Prepared Foods. The following table is a summary of sales and operating income (loss), which is how we measure segment income (loss).

In the fourth quarter fiscal 2008, we began to manage and report the operating results and identifiable assets of our logistics operations in the segment in which the product being moved relates. As a result, our operating segments now reflect logistics operations which were previously included in Other. All prior periods have been restated to reflect this change.

Segment results exclude the results of our discontinued operation, Lakeside.

	in millions					
	Sales			Operating Income (Loss)		
	2008	2007	2006	2008	2007	2006
Chicken	\$ 8,900	\$ 8,210	\$ 7,958	\$ (118)	\$ 325	\$ 94
Beef	11,664	11,540	10,866	106	51	(254)
Pork	3,587	3,314	3,067	280	145	55
Prepared Foods	2,711	2,665	2,698	63	92	55
Total	\$ 26,862	\$ 25,729	\$ 24,589	\$ 331	\$ 613	\$ (50)

Chicken Segment Results

	in millions					
			Change 2008			Change 2007
	2008	2007	vs. 2007	2006	vs. 2006	
Sales	\$ 8,900	\$ 8,210	\$ 690	\$ 7,958	\$ 252	
Sales Volume Change			(0.4)%		(4.7)%	
Average Sales Price Change			8.9%		8.3%	
Operating Income (Loss)	\$ (118)	\$ 325	\$ (443)	\$ 94	\$ 231	
Operating Margin	(1.3)%	4.0%		1.2%		

2008 – Operating loss included \$26 million of charges related to: plant closings; impairments of unimproved real property and software; and severance.

2007 – Operating income included a \$10 million gain on the sale of two poultry plants and related support facilities.

2006 – Operating income included \$9 million of charges related to our Cost Management Initiative, other business consolidation efforts and plant closing costs.

2008 vs. 2007 –

- **Sales and Operating Income (Loss)** – Sales increased as a result of an increase in average sales prices, partially offset by a decrease in sales volume due to the sale of two poultry plants in fiscal 2007. Operating results were adversely impacted by increased input costs of approximately \$900 million, including grain costs, other feed ingredient costs and cooking ingredients. Plant costs, including labor and logistics, increased by approximately \$200 million. This was partially offset by increased net gains of \$127 million from our commodity trading risk management activities related to grain purchases, which exclude the impact from related physical purchase transactions that will impact future period operating results. Operating results were also negatively impacted by increased selling, general and administrative expenses of \$43 million.

2007 vs. 2006 –

- **Sales and Operating Income** – Sales and operating income increased due to an increase in average sales prices, partially offset by a decrease in sales volume. The decrease in sales volume was due to planned production cuts, the sale of two poultry plants and the closure of a poultry plant in fiscal 2006 due to a fire. The increase in average sales prices contributed to improved operating income, partially offset by an increase in net grain costs of \$256 million. The increase of net grain costs includes \$334 million of increased grain costs, partially offset by increased net gains of \$78 million from our commodity risk management activities related to grain purchases. Additionally, operating income improved due to a decrease in selling, general and administrative expenses.

Beef Segment Results

	in millions					
	2008		2007		Change 2008 vs. 2007	Change 2007 vs. 2006
Sales	\$	11,664	\$	11,540	\$ 124	\$ 10,866
Sales Volume Change					(4.6)%	0.9%
Average Sales Price Change					5.9%	5.3%
Operating Income (Loss)	\$	106	\$	51	\$ 55	\$ (254)
Operating Margin		0.9%		0.4%		(2.3)%

2008 – Operating income included \$35 million of charges related to: plant restructuring; impairments of packaging equipment and intangible assets; and severance.

2006 – Operating loss included \$52 million of charges related to plant closings, our Cost Management Initiative and other business consolidation efforts.

2008 vs. 2007 –

- **Sales and Operating Income** – Sales and operating income were impacted positively by higher average sales prices and improved operational efficiencies, partially offset by decreased sales volume due primarily to closure of the Emporia, Kansas, slaughter operation. Operating results were also negatively impacted by higher operating costs. Fiscal 2008 operating results include realized and unrealized net gains of \$53 million from our commodity risk management activities related to forward futures contracts for live cattle, excluding the related impact from the physical sale and purchase transactions, compared to realized and unrealized net losses of \$2 million recorded in fiscal 2007. Operating results were positively impacted by an increase in average sales prices exceeding the increase in average live prices.

2007 vs. 2006 –

- **Sales and Operating Income (Loss)** – Sales and operating income increased due to higher average sales prices, as well as higher sales volume. Operating results improved due to operating cost efficiencies and yield improvements, partially offset by an increase in average live prices. Also, operating results improved significantly from a decrease in selling, general and administrative expenses. Fiscal 2007 operating results included realized and unrealized net losses of \$2 million from our commodity risk management activities related to forward futures contracts for live cattle, excluding the related impact from the physical sale and purchase transactions, compared to realized and unrealized net losses of \$40 million recorded in fiscal 2006.

TYSON FOODS, INC.

Pork Segment Results

	in millions					
	2008	2007	Change 2008 vs. 2007	2006	Change 2007 vs. 2006	
Sales	\$ 3,587	\$ 3,314	\$ 273	\$ 3,067	\$ 247	
Sales Volume Change			6.1%		5.1%	
Average Sales Price Change			2.1%		2.8%	
Operating Income	\$ 280	\$ 145	\$ 135	\$ 55	\$ 90	
Operating Margin	7.8%	4.4%		1.8%		

2008 – Operating income included \$5 million of charges related to impairment of packaging equipment and severance.

2008 vs. 2007 –

- **Sales and Operating Income** – Operating results were impacted positively by lower average live prices and strong export sales, which led to increased sales volume and a record year for operating margins. Fiscal 2008 operating results include realized and unrealized net gains of \$95 million from our commodity risk management activities related to forward futures contracts for live hogs, excluding the related impact from the physical sale and purchase transactions, compared to realized and unrealized net gains of \$3 million recorded in fiscal 2006. This was partially offset by higher operating costs, as well as lower average sales prices.

2007 vs. 2006 –

- **Sales and Operating Income** – Sales and operating income increased due to higher sales volume and increased average sales prices, due to increased domestic demand and strong export markets. Additionally, operating income was impacted positively by improved operating cost efficiencies and yield improvements, partially offset by higher average live prices. Fiscal 2007 operating results included realized and unrealized net gains of \$3 million from our commodity risk management activities related to forward futures contracts for live hogs, excluding the related impact from the physical sale and purchase transactions, compared to realized and unrealized net losses of \$15 million recorded in fiscal 2006.

Prepared Foods Segment Results

	in millions					
	2008	2007	Change 2008 vs. 2007	2006	Change 2007 vs. 2006	
Sales	\$ 2,711	\$ 2,665	\$ 46	\$ 2,698	\$ (33)	
Sales Volume Change			1.5%		(3.9)%	
Average Sales Price Change			0.2%		2.8%	
Operating Income	\$ 63	\$ 92	\$ (29)	\$ 55	\$ 37	
Operating Margin	2.3%	3.5%		2.0%		

2008 – Operating income included \$10 million of charges related to flood damage, an intangible asset impairment and severance.

2007 – Operating income included \$7 million of charges related to intangible asset impairments.

2006 – Operating income included \$19 million of charges related to plant closings, other business consolidation efforts and our Cost Management Initiative.

2008 vs. 2007 –

- **Sales and Operating Income** – Operating results were negatively impacted by higher raw material costs, which include wheat, dairy and cooking ingredient costs, partially offset by lower pork costs. Results were positively impacted by an increase in average sales prices.

2007 vs. 2006 –

- **Sales and Operating Income** – Sales declined primarily due to decreased sales volume, including reduced sales volume on lower margin products, partially offset by increased average sales prices. Operating income improved primarily due to an improvement in average sales prices, partially offset by an increase in plant costs and raw material costs.

TYSON FOODS, INC.**LIQUIDITY AND CAPITAL RESOURCES**

Our cash needs for working capital, capital expenditures and international growth are expected to be met with cash flows provided by operating activities, anticipated proceeds from the Lakeside sale, or short-term borrowings.

Cash Flows from Operating Activities	in millions		
	2008	2007	2006
Net income (loss)	\$ 86	\$ 268	\$ (196)
Non-cash items in net income (loss):			
Depreciation and amortization	493	514	517
Deferred taxes	35	5	(130)
Impairment and write-down of assets	57	14	18
Cumulative effect of change in accounting principle, before tax	-	-	9
Other, net	26	(15)	30
Income before changes in working capital	697	786	248
Changes in working capital	(409)	(108)	124
Net cash provided by operating activities	\$ 288	\$ 678	\$ 372

Income before changes in working capital represents net income (loss) adjusted for non-cash income and expenses. Additionally, this amount represents net cash provided by operating activities prior to changes in assets and liabilities associated with operations.

Changes in working capital:

- **2008** – Operating cash flows declined primarily due to higher inventory and accounts receivable balances, partially offset by a higher accounts payable balance. Higher inventory balances were driven by an increase in raw material costs and inventory volume.
- **2007** – Operating cash flows declined primarily due to higher inventory and accounts receivable balances, partially offset by a higher accounts payable balance.
- **2006** – Operating cash flows increased primarily due to a lower accounts receivable balance, higher accounts payable and interest payable balances, partially offset by a lower income taxes payable/receivable balance.

Cash Flows from Investing Activities	in millions		
	2008	2007	2006
Additions to property, plant and equipment	\$ (425)	\$ (285)	\$ (531)
Proceeds from sale of property, plant and equipment	26	76	21
Proceeds from sale (purchase) of marketable securities, net	(3)	16	23
Proceeds from sale (purchase) of short-term investment	-	770	(750)
Proceeds from sale of investments	22	-	-
Other, net	(19)	2	13
Net cash provided by (used for) investing activities	\$ (399)	\$ 579	\$ (1,224)

- Expenditures for property, plant and equipment include acquisition of new equipment to upgrade our facilities to maintain competitive standing and position us for future opportunities. In fiscal 2008, our capital spending included equipment updates in our chicken plants, as well as packaging equipment upgrades in our Fresh Meats case-ready facilities. In fiscal 2007, we focused on reducing our capital spending. In fiscal 2006, we had significant capital investing, including our new Discovery Center and the Sherman, Texas, case-ready facility.
 - Capital spending for fiscal 2009 is expected to be \$600-\$650 million, which includes the following:
 - approximately \$425-\$450 million on current core business capital spending;
 - approximately \$100-\$120 million on post-acquisition capital spending related to our Brazil and China acquisitions; and
 - approximately \$75-\$80 million related to Dynamic Fuels LLC's (Dynamic) facility. The cost to construct the facility is estimated to be \$138 million, which will be funded by \$100 million of Gulf Opportunity Zone tax-exempt bonds issued in October 2008, along with equity contributions made by Tyson and Syntroleum Corporation, most of which has already been made. Construction began in October 2008 and will continue through late 2009, with production targeted for early 2010.
- Proceeds from sale of assets in fiscal 2007 include \$40 million received related to the sale of two poultry plants and related support facilities.
- Short-term investment purchased in fiscal 2006 with proceeds from \$1.0 billion of senior notes maturing on April 1, 2016 (2016 Notes). The short-term investment was held in an interest bearing account with a trustee. In fiscal 2007, we used proceeds from sale of the short-term investment to repay our outstanding \$750 million 7.25% Notes due October 1, 2006.

TYSON FOODS, INC.

Cash Flows from Financing Activities

	in millions		
	2008	2007	2006
Net borrowings (payments) on revolving credit facilities	\$ (213)	\$ 53	\$ 158
Payments on debt	(147)	(1,263)	(166)
Net proceeds from borrowings	449	-	992
Net proceeds from Class A stock offering	274	-	-
Convertible note hedge transactions	(94)	-	-
Warrant transactions	44	-	-
Purchases of treasury shares	(30)	(61)	(42)
Dividends	(56)	(56)	(55)
Stock options exercised	9	74	32
Increase (decrease) in negative book cash balances	67	9	(85)
Other, net	18	(8)	10
Net cash provided by (used for) financing activities	\$ 321	\$ (1,252)	\$ 844

- Net borrowings (payments) on revolving credit facilities primarily include activity related to the accounts receivable securitization facility and commercial paper.
- Payments on debt include -
 - In fiscal 2008, we bought back \$40 million of our 2016 Notes and repaid the remaining \$25 million outstanding Lakeside term loan.
 - In fiscal 2007, we used proceeds from sale of the short-term investment to repay our outstanding \$750 million 7.25% Notes due October 1, 2006. In addition, we used cash from operations to reduce the amount outstanding under the Lakeside term loan by \$320 million, repay the outstanding \$125 million 7.45% Notes due June 1, 2007, and reduce other borrowings.
 - In fiscal 2006, we repaid the \$87 million 6.125% Senior Notes due February 1, 2006, and reduced other borrowings.
- Net proceeds from borrowings include -
 - In fiscal 2008, we issued \$458 million of 3.25% Convertible Senior Notes due October 15, 2013. Net proceeds were used for the net cost of the related Convertible Note Hedge and Warrant Transactions, toward the repayment of our borrowings under the accounts receivable securitization facility, and for other general corporate purposes.
 - In fiscal 2006, we issued \$1.0 billion of 2016 Notes. We used proceeds to purchase a short-term investment, as well as for other general corporate purposes. The short-term investment was later sold and used in fiscal 2007 to repay our outstanding \$750 million 7.25% Notes due October 1, 2006.
- In fiscal 2008, we issued 22.4 million shares of Class A stock in a public offering. Net proceeds were used toward repayment of our borrowings under the accounts receivable securitization facility and for other general corporate purposes.

					in millions	
Liquidity	Commitments Expiration Date	Facility Amount	Outstanding Letters of Credit (no draw downs)	Amount Borrowed	Amount Available	
Cash						\$ 250
Revolving credit facility	September 2010	\$ 1,000	\$ 291	\$ -	\$ 709	
Accounts receivable securitization facility	Aug. 2009, Aug. 2010	750	-	-	750	
Total liquidity						\$ 1,709

- The revolving credit facility supports our short-term funding needs and letters of credit. Letters of credit are issued primarily in support of workers' compensation insurance programs and derivative activities.
- The accounts receivable securitization facility is with three co-purchasers and allows us to sell up to \$750 million of trade receivables, consisting of \$375 million expiring in August 2009 and a \$375 million 364-day facility with an additional one-year option, which commits funding through August 2010. At September 27, 2008, we had access to the full \$750 million borrowing capacity. Our borrowing capacity could be reduced in the future if our eligible receivables balance falls below \$750 million.
- In conjunction with the \$100 million of Gulf Opportunity Zone tax-exempt bond issuance in October 2008, we agreed to issue a guarantee for the full amount of the bond issuance, which was issued in the form of a letter of credit, in exchange for eight million Syntroleum stock warrants valued at \$0.01 each. Both the issuance of the letter of credit and the receipt of Syntroleum warrants occurred subsequent to fiscal 2008. The letter of credit will reduce the unused borrowing capacity available under the revolving credit facility.
- In October 2008, we completed the acquisition of three vertically integrated poultry companies in southern Brazil. The purchase price was \$80 million, as well as up to an additional \$15 million of contingent purchase price based on production volumes payable through fiscal 2010. Additionally, once the joint venture agreement with Shandong Xinchang Group receives the necessary government approvals, we expect to spend \$110-\$115 million to acquire a 60% ownership. We expect this to be finalized during fiscal 2009.
- Subject to receipt of applicable government approvals, we anticipate being ready to complete the sale of Lakeside by the end of the first quarter fiscal 2009, with plans to use available proceeds to pay down debt and other general corporate purposes. Inclusive of working capital of Lakeside initially retained by us at closing, as well as consideration received from XL Foods, we expect the following future cash flows based on the September 27, 2008, currency exchange rate: \$55 million received at closing; approximately \$136 million in calendar 2009; \$49 million in notes receivable, plus interest, to be paid over two years by XL Foods; and \$29 million of XL Foods preferred stock redeemable over five years. The discontinuance of Lakeside's operation will not have a material effect on our future operating cash flows.
- Our current ratio at September 27, 2008, and September 29, 2007, was 2.07 to 1 and 1.74 to 1, respectively.

Deterioration of Credit and Capital Markets

Credit market conditions deteriorated rapidly during our fourth quarter of fiscal 2008 and continue into our first quarter of fiscal 2009. Several major banks and financial institutions failed or were forced to seek assistance through distressed sales or emergency government measures. While not all-inclusive, the following summarizes some of the impacts to our business:

Credit Facilities

Cash flows from operating activities are our primary source of liquidity for funding debt service and capital expenditures. However, we rely on our revolving credit and accounts receivable securitization facilities to provide additional liquidity for working capital needs, letters of credit, and as a source of financing for international growth. Our revolving credit facility has total committed capacity of \$1.0 billion. As of September 27, 2008, we had outstanding letters of credit totaling \$291 million, none of which were drawn upon, which left \$709 million available for borrowing. Our revolving credit facility is funded by a syndicate of 35 banks, with commitments ranging from \$5 million to \$78 million per bank. If any of the banks in the syndicate were unable to perform on their commitments to fund the facility, our liquidity could be impaired, which could reduce our ability to fund working capital needs or finance our international growth strategy.

Our accounts receivable securitization facility has \$750 million of committed funding, of which the entire amount was available for borrowing as of September 27, 2008. Our accounts receivable securitization facility is funded by a syndicate of three banks, with a commitment of \$250 million per bank. To date, all of the banks in the syndicate have continued to meet their commitments despite the recent market turmoil. If any of the banks in the syndicate were unable to perform on their commitments to fund the facility, our liquidity could be impaired, which could reduce our ability to fund working capital needs or finance our international growth strategy. We have borrowed against this facility subsequent to fiscal 2008 and all of the banks in the syndicate performed their obligations to fund these borrowings.

TYSON FOODS, INC.

Current market conditions have also resulted in higher credit spreads on long-term borrowings and significantly reduced demand for new corporate debt issuances.

Equity – Class A Common Stock

Equity prices, including our own Class A Common Stock, have fallen and experienced abnormally high volatility during the current period. If these conditions persist, our cost of capital will increase significantly.

Customers/Suppliers

The financial condition of some of our customers and suppliers could also be impaired by current market conditions. Although we have not experienced a material increase in customer bad debts or non-performance by suppliers, current market conditions increase the probability that we could experience losses from customer or supplier defaults. Should current credit and capital market conditions result in a prolonged economic downturn in the United States and abroad, demand for protein products could be reduced, which could result in a reduction of sales, operating income and cash flows.

Investments

The value of our investments in equity and debt securities, including our marketable debt securities, company-owned life insurance and pension and other postretirement plan assets, has been negatively impacted by the recent market declines. These instruments were recorded at fair value as of September 27, 2008; however, subsequent to September 27, 2008, through November 1, 2008, we have seen an additional reduction in fair value of approximately \$32 million. While we believe this reduction in fair value is temporary, if current market conditions continue, we could be required to recognize \$10 million of expense in the first quarter of fiscal 2009. The remaining change in fair value would be deferred in other comprehensive income unless determined to be permanently impaired.

We currently oversee two domestic and one foreign subsidiary non-contributory qualified defined benefit pension plans. All three pension plans are frozen to new participants and no additional benefits will accrue for participants. Based on our 2008 actuarial valuation, we anticipate contributions of approximately \$1 million to these plans for fiscal 2009. We also have one domestic unfunded defined benefit plan. Based on our 2008 actuarial valuation, we anticipate contributions of approximately \$1 million to this plan in fiscal 2009.

Financial Instruments

As part of our commodity risk management activities, we use derivative financial instruments, primarily futures and options, to reduce our exposure to various market risks related to commodity purchases. Similar to the capital markets, the commodities markets have seen a similar decline over the past several months. Grain prices reached an all-time high during our fourth quarter of fiscal 2008 before falling sharply to the current levels. While the reduction in grain prices benefit us long-term, we may be required to record additional losses related to these financial instruments in the first quarter of fiscal 2009 if grain prices remain lower than prices at the end of fiscal 2008.

Insurance

We rely on insurers as a protection against liability claims, property damage and various other risks. Our primary insurers maintain an A.M. Best Financial Strength Rating of A+ or better. Nevertheless, we continue to monitor this situation as insurers have been and are expected to continue to be impacted by the current capital market environment.

TYSON FOODS, INC.

Capitalization

	in millions		
	2008	2007	2006
Senior notes	\$ 2,400	\$ 2,475	\$ 3,388
3.25% Convertible senior notes	458	-	-
Lakeside term loan	-	25	345
Other indebtedness	38	279	246
Total Debt	\$ 2,896	\$ 2,779	\$ 3,979
Total Equity	\$ 5,014	\$ 4,731	\$ 4,440
Debt to Capitalization Ratio	36.6%	37.0%	47.3%

- In fiscal 2008, we issued \$458 million of 3.25% Convertible Senior Notes due October 15, 2013. Net proceeds were used for the net cost of the Convertible Note Hedge and Warrant Transactions, toward the repayment of our borrowings under the accounts receivable securitization facility, and for other general corporate purposes.
- In fiscal 2008, we issued 22.4 million shares of Class A stock in a public offering. Net proceeds were used toward repayment of our borrowings under the accounts receivable securitization facility and for other general corporate purposes.
- At September 30, 2006, we had \$750 million in a short-term investment held on deposit with a trustee. Proceeds from sale of short-term investment were used to repay the \$750 million 7.25% Notes due October 1, 2006. This repayment was made in fiscal 2007. When adjusted for the \$750 million short-term investment held on deposit, total debt would have been \$3.2 billion, with a debt to capitalization ratio of 42.1%.

Credit Ratings

2016 Notes

On July 24, 2006, Moody's Investors Services, Inc. (Moody's) downgraded the credit rating from "Baa3" to "Ba1." This downgrade increased the interest rate on the 2016 Notes from 6.60% to 6.85%, effective on the first day of the interest period during which the rating change required an adjustment to the interest rate (i.e., the issuance of the 2016 Notes). Additionally, on July 31, 2006, Standard & Poor's (S&P) downgraded the credit rating from "BBB" to "BBB-." This downgrade did not change the interest rate on the 2016 Notes.

On September 4, 2008, S&P downgraded the credit rating from "BBB-" to "BB." This downgrade increased the interest rate on the 2016 Notes from 6.85% to 7.35%, effective beginning with the six month interest payment due October 1, 2008.

On November 13, 2008, Moody's downgraded the credit rating from "Ba1" to "Ba3." This downgrade increased the interest rate on the 2016 Notes from 7.35% to 7.85%, effective beginning with the six month interest payment due April 1, 2009.

S&P currently rates the 2016 Notes "BB." Moody's currently rates this debt "Ba3." A further one-notch downgrade by either ratings agency would increase the interest rates on the 2016 Notes by an additional 0.25% per ratings agency.

Revolving Credit Facility Rating

After an upgrade on October 1, 2008, S&P's credit rating for the revolving credit facility is "BBB-." After a downgrade on November 13, 2008, Moody's credit rating is "Ba2." The pretax impact to earnings of another downgrade would not be material to annual interest expense. However, if Moody's were to downgrade this facility to "Ba3" or below, or if S&P were to downgrade this facility to "BB-" or below, then the banks participating in our accounts receivable securitization facility could refuse to purchase any additional receivables from us and the accounts receivable securitization facility could unwind with any amounts outstanding under the facility repaid as the receivables owned by Tyson Receivables Company, our wholly-owned consolidated special purpose entity, are collected.

Debt Covenants

Our debt agreements contain various covenants, the most restrictive of which contain maximum allowed leverage ratios and a minimum required interest coverage ratio. On September 10, 2008, we amended our revolving credit facility agreement to provide a less restrictive maximum allowed leverage ratio, which takes effect in first quarter of fiscal 2009. All trademarks of our domestic subsidiaries are pledged as collateral under the revolving credit facility. Additionally, certain domestic subsidiaries guaranteed this facility and pledged inventory as collateral. We were in compliance with all covenants at September 27, 2008.

Based on the current industry outlook and our internal forecasts, we anticipate we will be in compliance with our debt covenants throughout fiscal 2009. However, our Chicken segment in the first part of fiscal 2009 will be negatively impacted by difficult export markets and long grain positions that could negatively impact our covenant compliance.

TYSON FOODS, INC.**OFF-BALANCE SHEET ARRANGEMENTS**

We do not have any off-balance sheet arrangements material to our financial position or results of operations. The off-balance sheet arrangements we have are guarantees of debt of outside third parties, including a lease and grower loans, and residual value guarantees covering certain operating leases for various types of equipment. See Note 9, "Commitments" of the Notes to Consolidated Financial Statements for further discussion.

CONTRACTUAL OBLIGATIONS

The following table summarizes our contractual obligations as of September 27, 2008:

	in millions				
	Payments Due by Period				
	2009	2010 – 2011	2012 - 2013	2014 and thereafter	Total
Debt and capital lease obligations:					
Principal payments (1)	\$ 8	\$ 1,245	\$ 5	\$ 1,638	\$ 2,896
Interest payments (2)	289	339	207	329	1,164
Guarantees (3)	25	29	33	34	121
Operating lease obligations (4)	80	102	48	23	253
Purchase obligations (5)	710	73	20	24	827
Capital expenditures (6)	308	58	-	-	366
Other long-term liabilities (7)	8	5	5	32	50
Total contractual commitments	\$ 1,428	\$ 1,851	\$ 318	\$ 2,080	\$ 5,677

- (1) In the event of a default on payment or violation of debt covenants, acceleration of the principal payments could occur. At September 27, 2008, we were in compliance with all of our debt covenants.
- (2) Interest payments included interest on all outstanding debt. Payments are estimated for variable rate and variable term debt based on effective rates at September 27, 2008, and expected payment dates.
- (3) Amounts included guarantees of debt of outside third parties, which consist of a lease and grower loans, all of which are substantially collateralized by the underlying assets, as well as residual value guarantees covering certain operating leases for various types of equipment. The amounts included are the maximum potential amount of future payments.
- (4) Amounts included in operating lease obligations are minimum lease payments under lease agreements.
- (5) Amounts included in purchase obligations are agreements to purchase goods or services that are enforceable and legally binding and specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. The purchase obligations amount included items, such as future purchase commitments for grains, livestock contracts and fixed grower fees that provide terms that meet the above criteria. We have excluded future purchase commitments for contracts that do not meet these criteria. Purchase orders have not been included in the table, as a purchase order is an authorization to purchase and may not be considered an enforceable and legally binding contract. Contracts for goods or services that contain termination clauses without penalty have also been excluded.
- (6) Amounts included in capital expenditures are estimated amounts to complete buildings and equipment under construction as of September 27, 2008, as well as costs to construct Dynamic's facility.
- (7) Amounts included in other long-term liabilities are items that meet the definition of a purchase obligation and are recorded in the Consolidated Balance Sheets.

In addition to the amounts shown above in the table, we have unrecognized tax benefits of \$220 million and related interest and penalties of \$67 million at September 27, 2008, recorded as liabilities in accordance with Interpretation No. 48, "Accounting for Uncertainty in Income Taxes," an interpretation of FASB Statement No. 109 (FIN 48). During fiscal 2009, tax audit resolutions could potentially reduce these amounts by approximately \$38 million, either because tax positions are sustained on audit or because we agree to their disallowance. For the remaining liability, due to the uncertainties related to these income tax matters, we are unable to make a reasonably reliable estimate of the amounts or timing of potential reductions.

TYSON FOODS, INC.

RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

In June 2006, the FASB issued FIN 48. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. We adopted FIN 48 at the beginning of fiscal 2008. The adoption of FIN 48 resulted in a change to the opening Consolidated Balance Sheet as follows: \$32 million increase to Other Current Assets, \$17 million decrease to Other Current Liabilities, \$106 million increase to Other Liabilities, \$40 million decrease to Deferred Income Taxes and \$17 million decrease to Retained Earnings. Included in these changes we recognized a \$120 million increase in the liability for unrecognized tax benefits and a \$21 million increase in the related liability for interest and penalties for a total of \$141 million.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)" (SFAS No. 158). SFAS No. 158 requires companies to recognize the funded status of a defined benefit postretirement plan as an asset or liability in its consolidated balance sheet and to recognize changes in funded status in the year in which the changes occur through other comprehensive income. We adopted SFAS No. 158 at the end of fiscal 2007 except for the requirement to measure the funded status of a plan as of the date of its annual consolidated balance sheet, which we adopted in fiscal 2008 and which had an immaterial impact. See Note 13, "Pensions and Other Postretirement Benefits" in the Notes to Consolidated Financial Statements for the impact of the adoption of SFAS No. 158.

In March 2005, the FASB issued FIN 47. Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations" (SFAS No. 143), was issued in June 2001 and requires an entity to recognize the fair value of a liability for an asset retirement obligation in the period in which it is incurred if a reasonable estimate of fair value can be made. SFAS No. 143 applies to legal obligations associated with the retirement of a tangible long-lived asset that resulted from the acquisition, construction, development and/or the normal operation of a long-lived asset. The associated asset costs are capitalized as part of the carrying amount of the long-lived asset. FIN 47 clarifies the term "conditional asset retirement obligation" as used in SFAS No. 143, which refers to a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement are conditional on a future event that may or may not be within the control of the entity. FIN 47 requires an entity to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value of the liability can be reasonably estimated. Uncertainty about the timing and/or method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. We adopted FIN 47 as of September 30, 2006. See Note 2, "Change in Accounting Principle" in the Notes to Consolidated Financial Statements for the impact of the adoption of FIN 47.

TYSON FOODS, INC.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, "Fair Value Measurements" (SFAS No. 157). SFAS No. 157 provides guidance for using fair value to measure assets and liabilities. This standard also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value and the effect of fair value measurements on earnings. SFAS No. 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value. Beginning September 28, 2008, we partially applied SFAS No. 157 as allowed by FASB Staff Position (FSP) 157-2, which delayed the effective date of SFAS No. 157 for nonfinancial assets and liabilities. As of September 28, 2008, we have applied the provisions of SFAS No. 157 to our financial instruments and the impact was not material. Under FSP 157-2, we will be required to apply SFAS No. 157 to our nonfinancial assets and liabilities at the beginning of fiscal 2010. We are currently reviewing the applicability of SFAS No. 157 to our nonfinancial assets and liabilities as well as the potential impact on our consolidated financial statements.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115" (SFAS No. 159). This statement provides companies with an option to report selected financial assets and liabilities firm commitments, and nonfinancial warranty and insurance contracts at fair value on a contract-by-contract basis, with changes in fair value recognized in earnings each reporting period. At September 28, 2008, we did not elect the fair value option under SFAS No. 159 and therefore there was no impact to our consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, "Noncontrolling Interests in Consolidated Financial Statements" (SFAS No. 160). SFAS No. 160 amends Accounting Research Bulletin No. 51, "Consolidated Financial Statements" to establish accounting and reporting standards for a noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity and should be reported as equity in the consolidated financial statements, rather than in the liability or mezzanine section between liabilities and equity. SFAS No. 160 also requires consolidated net income be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. The impact of SFAS No. 160 will not have a material impact on our current Consolidated Financial Statements. SFAS No. 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008; therefore, we expect to adopt SFAS No. 160 at the beginning of fiscal 2010.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141R, "Business Combinations" (SFAS No. 141R). SFAS No. 141R establishes principles and requirements for how an acquirer in a business combination: 1) recognizes and measures in its financial statements identifiable assets acquired, liabilities assumed, and any noncontrolling interest in the acquiree; 2) recognizes and measures goodwill acquired in a business combination or a gain from a bargain purchase; and 3) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of a business combination. SFAS No. 141R is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008; therefore, we expect to adopt SFAS No. 141R for any business combinations entered into beginning in fiscal 2010.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, "Disclosures about Derivative Instruments and Hedging Activities - an amendment of FASB Statement No. 133" (SFAS No. 161). SFAS No. 161 establishes enhanced disclosure requirements about: 1) how and why an entity uses derivative instruments; 2) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations; and 3) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008; therefore, we expect to adopt SFAS No. 161 in the second quarter of fiscal 2009.

In May 2008, the FASB issued FASB Staff Position No. APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)" (FSP APB 14-1). FSP APB 14-1 specifies that issuers of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. The amount allocated to the equity component represents a discount to the debt, which is amortized into interest expense using the effective interest method over the life of the debt. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Early adoption is not permitted. Therefore, we expect to adopt the provisions of FSP APB 14-1 beginning in the first quarter of fiscal 2010. The provisions of FSP APB 14-1 are required to be applied retrospectively to all periods presented. Upon retrospective adoption, we anticipate our effective interest rate on our 3.25% Convertible Senior Notes due 2013 will range from 8.0% to 8.50%, which would result in the recognition of an approximate \$90 million to \$100 million discount to these notes with the offsetting after tax amount recorded to capital in excess of par value. This discount will be accreted until the maturity date at the effective interest rate, which will not materially impact fiscal 2008 interest expense, but will result in an estimated \$15 million to \$20 million increase to our fiscal 2009 interest expense.

TYSON FOODS, INC.

CRITICAL ACCOUNTING ESTIMATES

The preparation of consolidated financial statements requires us to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The following is a summary of certain accounting estimates we consider critical.

Description	Judgments and Uncertainties	Effect if Actual Results Differ From Assumptions
<p>Contingent liabilities</p> <p>We are subject to lawsuits, investigations and other claims related to wage and hour/labor, livestock procurement, securities, environmental, product, taxing authorities and other matters, and are required to assess the likelihood of any adverse judgments or outcomes to these matters, as well as potential ranges of probable losses.</p> <p>A determination of the amount of reserves and disclosures required, if any, for these contingencies are made after considerable analysis of each individual issue. We accrue for contingent liabilities when an assessment of the risk of loss is probable and can be reasonably estimated. We disclose contingent liabilities when the risk of loss is reasonably possible or probable.</p>	<p>Our contingent liabilities contain uncertainties because the eventual outcome will result from future events, and determination of current reserves requires estimates and judgments related to future changes in facts and circumstances, differing interpretations of the law and assessments of the amount of damages, and the effectiveness of strategies or other factors beyond our control.</p>	<p>We have not made any material changes in the accounting methodology used to establish our contingent liabilities during the past three fiscal years.</p> <p>We do not believe there is a reasonable likelihood there will be a material change in the estimates or assumptions used to calculate our contingent liabilities. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to gains or losses that could be material.</p>
<p>Marketing and advertising costs</p> <p>We incur advertising, retailer incentive and consumer incentive costs to promote products through marketing programs. These programs include cooperative advertising, volume discounts, in-store display incentives, coupons and other programs.</p> <p>Marketing and advertising costs are charged in the period incurred. We accrue costs based on the estimated performance, historical utilization and redemption of each program.</p> <p>Cash consideration given to customers is considered a reduction in the price of our products, thus recorded as a reduction to sales. The remainder of marketing and advertising costs is recorded as a selling, general and administrative expense.</p>	<p>Recognition of the costs related to these programs contains uncertainties due to judgment required in estimating the potential performance and redemption of each program.</p> <p>These estimates are based on many factors, including experience of similar promotional programs.</p>	<p>We have not made any material changes in the accounting methodology used to establish our marketing accruals during the past three fiscal years.</p> <p>We do not believe there is a reasonable likelihood there will be a material change in the estimates or assumptions used to calculate our marketing accruals. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to gains or losses that could be material.</p> <p>A 10% change in our marketing accruals at September 27, 2008, would impact pretax earnings by approximately \$10 million.</p>

Description	Judgments and Uncertainties	Effect if Actual Results Differ From Assumptions
Accrued self insurance		
<p>We are self insured for certain losses related to health and welfare, workers' compensation, auto liability and general liability claims.</p>	<p>Our self-insurance liability contains uncertainties due to assumptions required and judgment used.</p>	<p>We have not made any material changes in the accounting methodology used to establish our self-insurance liability during the past three fiscal years.</p>
<p>We use an independent third-party actuary to assist in determining our self-insurance liability. We and the actuary consider a number of factors when estimating our self-insurance liability, including claims experience, demographic factors, severity factors and other actuarial assumptions.</p>	<p>Costs to settle our obligations, including legal and healthcare costs, could increase or decrease causing estimates of our self-insurance liability to change.</p>	<p>We do not believe there is a reasonable likelihood there will be a material change in the estimates or assumptions used to calculate our self-insurance liability. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to gains or losses that could be material.</p>
<p>We periodically review our estimates and assumptions with our third-party actuary to assist us in determining the adequacy of our self-insurance liability. Our policy is to maintain an accrual within the central to high point of the actuarial range.</p>	<p>Incident rates, including frequency and severity, could increase or decrease causing estimates in our self-insurance liability to change.</p>	<p>A 10% increase in the actuarial range at September 27, 2008, would not impact the amount we recorded for our self-insurance liability. A 10% decrease in the actuarial range at September 27, 2008, would result in a gain in the amount we recorded for our self-insurance liability of approximately \$23 million.</p>
Impairment of long-lived assets		
<p>Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate the carrying value may not be recoverable. Examples include a significant adverse change in the extent or manner in which we use a long-lived asset or a change in its physical condition.</p>	<p>Our impairment analysis contains uncertainties due to judgment in assumptions and estimates surrounding undiscounted future cash flows of the long-lived asset, including forecasting useful lives of assets and selecting the discount rate that reflects the risk inherent in future cash flows to determine fair value.</p>	<p>We have not made any material changes in the accounting methodology used to evaluate the impairment of long-lived assets during the last three fiscal years.</p>
<p>When evaluating long-lived assets for impairment, we compare the carrying value of the asset to the asset's estimated undiscounted future cash flows. An impairment is indicated if the estimated future cash flows are less than the carrying value of the asset. The impairment is the excess of the carrying value over the fair value of the long-lived asset.</p>		<p>We do not believe there is a reasonable likelihood there will be a material change in the estimates or assumptions used to calculate impairments of long-lived assets. However, if actual results are not consistent with our estimates and assumptions used to calculate estimated future cash flows, we may be exposed to impairment losses that could be material.</p>
<p>We recorded impairment charges related to long-lived assets of \$52 million, \$6 million and \$67 million, respectively, in fiscal years 2008, 2007 and 2006.</p>		

**Effect if Actual Results Differ
From Assumptions**

Description

Judgments and Uncertainties

Impairment of goodwill and other intangible assets

Goodwill impairment is determined using a two-step process. The first step is to identify if a potential impairment exists by comparing the fair value of a reporting unit with its carrying amount, including goodwill. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is not considered to have a potential impairment and the second step of the impairment test is not necessary. However, if the carrying amount of a reporting unit exceeds its fair value, the second step is performed to determine if goodwill is impaired and to measure the amount of impairment loss to recognize, if any.

The second step compares the implied fair value of goodwill with the carrying amount of goodwill. If the implied fair value of goodwill exceeds the carrying amount, then goodwill is not considered impaired. However, if the carrying amount of goodwill exceeds the implied fair value, an impairment loss is recognized in an amount equal to that excess.

The implied fair value of goodwill is determined in the same manner as the amount of goodwill recognized in a business combination (i.e., the fair value of the reporting unit is allocated to all the assets and liabilities, including any unrecognized intangible assets, as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the purchase price paid to acquire the reporting unit).

For our other intangible assets, if the carrying value of the intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to that excess.

We have elected to make the first day of the fourth quarter the annual impairment assessment date for goodwill and other intangible assets. However, we could be required to evaluate the recoverability of goodwill and other intangible assets prior to the required annual assessment if we experience disruptions to the business, unexpected significant declines in operating results, divestiture of a significant component of the business or a sustained decline in market capitalization.

We estimate the fair value of our reporting units, generally our operating segments, using various valuation techniques, with the primary technique being a discounted cash flow analysis. A discounted cash flow analysis requires us to make various judgmental assumptions about sales, operating margins, growth rates and discount rates. Assumptions about sales, operating margins and growth rates are based on our budgets, business plans, economic projections, anticipated future cash flows and marketplace data. Assumptions are also made for varying perpetual growth rates for periods beyond the long-term business plan period.

While estimating the fair value of our Beef and Chicken reporting units, we assumed operating margins in future years in excess of the margins realized in the most current year. The fair value estimates for these reporting units assume normalized operating margin assumptions and improved operating efficiencies based on long-term expectations and margins historically realized in the beef and chicken industries. We estimate the fair value of our Beef reporting unit would be in excess of its carrying amount, including goodwill, by sustaining long-term operating margins of approximately 2.3%. We estimate the fair value of our Chicken reporting units would be in excess of its carrying amount, including goodwill, by sustaining long-term operating margins of approximately 5.1%.

Other intangible asset fair values have been calculated for trademarks using a royalty rate method and using the present value of future cash flows for patents and in-process technology. Assumptions about royalty rates are based on the rates at which similar brands and trademarks are licensed in the marketplace.

Our impairment analysis contains uncertainties due to uncontrollable events that could positively or negatively impact the anticipated future economic and operating conditions.

We have not made any material changes in the accounting methodology used to evaluate impairment of goodwill and other intangible assets during the last three years.

As a result of the first step of the 2008 goodwill impairment analysis, the fair value of each reporting unit exceeded its carrying value. Therefore, the second step was not necessary. However, a 6% decline in fair value of our Beef reporting unit or an 11% decline in fair value of our Chicken reporting unit would have caused the carrying values for these reporting units to be in excess of fair values which would require the second step to be performed. The second step could have resulted in an impairment loss for goodwill.

While we believe we have made reasonable estimates and assumptions to calculate the fair value of the reporting units and other intangible assets, it is possible a material change could occur. If our actual results are not consistent with our estimates and assumptions used to calculate fair value, we may be required to perform the second step which could result in a material impairment of our goodwill.

During the latter part of the fourth quarter of fiscal 2008 and continuing into November 2008, our market capitalization was below book value. While we considered the market capitalization decline in our evaluation of fair value of goodwill, we determined it did not impact the overall goodwill impairment analysis as we believe the decline to be primarily attributed to the negative market conditions as a result of the credit crisis, indications of a possible recession and current issues within the poultry industry. We will continue to monitor our market capitalization as a potential impairment indicator considering overall market conditions and poultry industry events.

Our fiscal 2008 other intangible asset impairment analysis did not result in a material impairment charge. A hypothetical 10% decrease in the fair value of intangible assets would not result in a material impairment.

Description	Judgments and Uncertainties	Effect if Actual Results Differ From Assumptions
Income taxes		
We estimate total income tax expense based on statutory tax rates and tax planning opportunities available to us in various jurisdictions in which we earn income.	Changes in tax laws and rates could affect recorded deferred tax assets and liabilities in the future.	We do not believe there is a reasonable likelihood there will be a material change in the tax related balances or valuation allowances. However, due to the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from the current estimate of the tax liabilities.
Federal income taxes include an estimate for taxes on earnings of foreign subsidiaries expected to be remitted to the United States and be taxable, but not for earnings considered indefinitely invested in the foreign subsidiary.	Changes in projected future earnings could affect the recorded valuation allowances in the future.	
Deferred income taxes are recognized for the future tax effects of temporary differences between financial and income tax reporting using tax rates in effect for the years in which the differences are expected to reverse.	Our calculations related to income taxes contain uncertainties due to judgment used to calculate tax liabilities in the application of complex tax regulations across the tax jurisdictions where we operate.	To the extent we prevail in matters for which FIN 48 liabilities have been established, or are required to pay amounts in excess of our recorded FIN 48 liabilities, our effective tax rate in a given financial statement period could be materially affected. An unfavorable tax settlement would require use of our cash and result in an increase in our effective tax rate in the period of resolution. A favorable tax settlement would be recognized as a reduction in our effective tax rate in the period of resolution.
Valuation allowances are recorded when it is likely a tax benefit will not be realized for a deferred tax asset.	Our analysis of unrecognized tax benefits contain uncertainties based on judgment used to apply the more likely than not recognition and measurement thresholds of FIN 48.	
We record unrecognized tax benefit liabilities for known or anticipated tax issues based on our analysis of whether, and the extent to which, additional taxes will be due. This analysis is performed in accordance with the requirements of FIN 48, which we adopted at the beginning of fiscal year 2008.		

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

MARKET RISK

Market risk relating to our operations results primarily from changes in commodity prices, interest rates and foreign exchange rates, as well as credit risk concentrations. To address certain of these risks, we enter into various derivative transactions as described below. If a derivative instrument is accounted for as a hedge, as defined by Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" (SFAS No. 133), as amended, depending on the nature of the hedge, changes in the fair value of the instrument either will be offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings, or be recognized in other comprehensive income (loss) until the hedged item is recognized in earnings. The ineffective portion of an instrument's change in fair value, as defined by SFAS No. 133, is recognized immediately. Additionally, we hold certain positions, primarily in grain and livestock futures that either do not meet the criteria for hedge accounting or are not designated as hedges. These positions are marked to market, and the unrealized gains and losses are reported in earnings at each reporting date. Changes in market value of derivatives used in our risk management activities relating to forward sales contracts are recorded in sales. Changes in market value of derivatives used in our risk management activities surrounding inventories on hand or anticipated purchases of inventories are recorded in cost of sales.

The sensitivity analyses presented below are the measures of potential losses of fair value resulting from hypothetical changes in market prices related to commodities. Sensitivity analyses do not consider the actions we may take to mitigate our exposure to changes, nor do they consider the effects such hypothetical adverse changes may have on overall economic activity. Actual changes in market prices may differ from hypothetical changes.

Commodities Risk: We purchase certain commodities, such as grains and livestock, in the course of normal operations. As part of our commodity risk management activities, we use derivative financial instruments, primarily futures and options, to reduce the effect of changing prices and as a mechanism to procure the underlying commodity. However, as the commodities underlying our derivative

TYSON FOODS, INC.

financial instruments can experience significant price fluctuations, any requirement to mark-to-market the positions that have not been designated or do not qualify as hedges under SFAS No. 133 could result in volatility in our results of operations. Contract terms of a hedge instrument closely mirror those of the hedged item providing a high degree of risk reduction and correlation. Contracts designated and highly effective at meeting this risk reduction and correlation criteria are recorded using hedge accounting. The following table presents a sensitivity analysis resulting from a hypothetical change of 10% in market prices as of September 27, 2008, and September 29, 2007, on the fair value of open positions. The fair value of such positions is a summation of the fair values calculated for each commodity by valuing each net position at quoted futures prices. The market risk exposure analysis includes hedge and non-hedge derivative financial instruments.

Effect of 10% change in fair value	in millions	
	2008	2007
Livestock:		
Cattle	\$ 78	\$ 33
Hogs	31	64
Grain	88	9

Interest Rate Risk: At September 27, 2008, we had fixed-rate debt of \$2.9 billion with a weighted average interest rate of 7.0%. We have exposure to changes in interest rates on this fixed-rate debt. Market risk for fixed-rate debt is estimated as the potential increase in fair value, resulting from a hypothetical 10% decrease in interest rates. A hypothetical 10% decrease in interest rates would have increased the fair value of our fixed-rate debt by approximately \$45 million at September 27, 2008, and \$58 million at September 29, 2007. The fair values of our debt were estimated based on quoted market prices and/or published interest rates.

At September 27, 2008, we had variable rate debt of \$19 million with a weighted average interest rate of 4.6%. A hypothetical 10% increase in interest rates effective at September 27, 2008, and September 29, 2007, would have a minimal effect on interest expense.

Foreign Currency Risk: We have foreign exchange gain/loss exposure from fluctuations in foreign currency exchange rates primarily as a result of certain receivable and payable balances. The primary currency exchanges we have exposure to are the Canadian dollar, the Mexican peso, the European euro, the British pound sterling and the Brazilian real. We periodically enter into foreign exchange forward contracts to hedge some portion of our foreign currency exposure. A hypothetical 10% change in foreign exchange rates effective at September 27, 2008, and September 29, 2007, related to the foreign exchange forward contracts would have an \$11 million and \$3 million, respectively, impact on pretax income. In the future, we may enter into more foreign exchange forward contracts as a result of our international growth strategy.

Concentrations of Credit Risk: Our financial instruments exposed to concentrations of credit risk consist primarily of cash equivalents and trade receivables. Our cash equivalents are in high quality securities placed with major banks and financial institutions. Concentrations of credit risk with respect to receivables are limited due to our large number of customers and their dispersion across geographic areas. We perform periodic credit evaluations of our customers' financial condition and generally do not require collateral. At September 27, 2008, and September 29, 2007, 12.2% and 12.1%, respectively, of our net accounts receivable balance was due from Wal-Mart Stores, Inc. No other single customer or customer group represents greater than 10% of net accounts receivable.

TYSON FOODS, INC.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

CONSOLIDATED STATEMENTS OF OPERATIONS

Three years ended September 27, 2008
in millions, except per share data

	2008	2007	2006
Sales	\$ 26,862	\$ 25,729	\$ 24,589
Cost of Sales	25,616	24,300	23,639
	1,246	1,429	950
Operating Expenses:			
Selling, general and administrative	879	814	930
Other charges	36	2	70
Operating Income (Loss)	331	613	(50)
Other (Income) Expense:			
Interest income	(9)	(8)	(30)
Interest expense	215	232	268
Other, net	(29)	(21)	(20)
	177	203	218
Income (Loss) from Continuing Operations before Income Taxes	154	410	(268)
Income Tax Expense (Benefit)	68	142	(94)
Income (Loss) from Continuing Operations	86	268	(174)
Loss from Discontinued Operation, Net of Tax \$0, \$0, \$(8)	-	-	(17)
Income (Loss) before Cumulative Effect of Change in Accounting Principle	86	268	(191)
Cumulative Effect of Change in Accounting Principle, Net of Tax	-	-	(5)
Net Income (Loss)	\$ 86	\$ 268	\$ (196)
Weighted Average Shares Outstanding:			
Class A Basic	281	273	249
Class B Basic	70	75	96
Diluted	356	355	345
Earnings (Loss) Per Share from Continuing Operations:			
Class A Basic	\$ 0.25	\$ 0.79	\$ (0.51)
Class B Basic	\$ 0.22	\$ 0.70	\$ (0.47)
Diluted	\$ 0.24	\$ 0.75	\$ (0.51)
Loss Per Share from Discontinued Operation:			
Class A Basic	\$ -	\$ -	\$ (0.05)
Class B Basic	\$ -	\$ -	\$ (0.05)
Diluted	\$ -	\$ -	\$ (0.05)
Cumulative Effect of Change in Accounting Principle			
Class A Basic	\$ -	\$ -	\$ (0.02)
Class B Basic	\$ -	\$ -	\$ (0.01)
Diluted	\$ -	\$ -	\$ (0.02)
Net Earnings (Loss) per Share			
Class A Basic	\$ 0.25	\$ 0.79	\$ (0.58)
Class B Basic	\$ 0.22	\$ 0.70	\$ (0.53)
Diluted	\$ 0.24	\$ 0.75	\$ (0.58)

See accompanying notes.

CONSOLIDATED BALANCE SHEETS

September 27, 2008, and September 29, 2007
in millions, except share and per share data

	2008	2007
Assets		
Current Assets:		
Cash and cash equivalents	\$ 250	\$ 42
Accounts receivable, net	1,271	1,246
Inventories	2,538	2,159
Other current assets	143	70
Assets of discontinued operation held for sale	159	164
Total Current Assets	4,361	3,681
Net Property, Plant and Equipment	3,519	3,608
Goodwill	2,511	2,485
Intangible Assets	128	126
Other Assets	331	327
Total Assets	\$ 10,850	\$ 10,227
Liabilities and Shareholders' Equity		
Current Liabilities:		
Current debt	\$ 8	\$ 137
Trade accounts payable	1,217	1,050
Other current liabilities	878	928
Total Current Liabilities	2,103	2,115
Long-Term Debt	2,888	2,642
Deferred Income Taxes	291	367
Other Liabilities	554	372
Shareholders' Equity:		
Common stock (\$0.10 par value):		
Class A-authorized 900 million shares:		
issued 322 million shares in 2008 and 300 million shares in 2007	32	30
Convertible Class B-authorized 900 million shares:		
issued 70 million shares in both 2008 and 2007	7	7
Capital in excess of par value	2,161	1,877
Retained earnings	3,006	2,993
Accumulated other comprehensive income	41	50
	5,247	4,957
Less treasury stock, at cost-		
15 million shares in 2008 and 14 million shares in 2007	233	226
Total Shareholders' Equity	5,014	4,731
Total Liabilities and Shareholders' Equity	\$ 10,850	\$ 10,227

See accompanying notes.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

Three years ended September 27, 2008
in millions

	September 27, 2008		September 29, 2007		September 30, 2006	
	Shares	Amount	Shares	Amount	Shares	Amount
Class A Common Stock:						
Balance at beginning of year	300	\$30	284	\$28	268	\$27
Issuance of Class A Common Stock	22	2	-	-	-	-
Conversion from Class B shares	-	-	16	2	16	1
Balance at end of year	322	32	300	30	284	28
Class B Common Stock:						
Balance at beginning of year	70	7	86	9	102	10
Conversion to Class A shares	-	-	(16)	(2)	(16)	(1)
Balance at end of year	70	7	70	7	86	9
Capital in Excess of Par Value:						
Balance at beginning of year		1,877		1,835		1,867
Issuance of Class A Common Stock		272		-		-
Convertible note hedge transactions		(58)		-		-
Warrant transactions		44		-		-
Stock options exercised		(5)		9		(2)
Restricted shares issued		(14)		(26)		(16)
Restricted shares canceled		2		27		3
Cumulative effect of adoption of SFAS No. 123R		-		-		(55)
Restricted share amortization		19		24		26
Reclassification and other		24		8		12
Balance at end of year		2,161		1,877		1,835
Retained Earnings:						
Balance at beginning of year		2,993		2,781		3,032
Cumulative effect of adoption of FIN 48		(17)		-		-
Net income (loss)		86		268		(196)
Dividends paid		(56)		(56)		(55)
Balance at end of year		3,006		2,993		2,781
Accumulated Other Comprehensive Income (Loss), Net of Tax:						
Balance at beginning of year		50		17		28
Net hedging (gain) loss recognized in cost of sales		(6)		(20)		3
Net hedging unrealized gain		4		20		1
Unrealized gain (loss) on investments		(1)		-		1
Currency translation adjustment		(2)		24		(6)
Net change in postretirement liabilities		(4)		-		-
Net change in pension liability, prior to the adoption of SFAS No. 158		-		6		(10)
Adjustment to initially apply SFAS No. 158		-		3		-
Balance at end of year		41		50		17
Treasury Stock:						
Balance at beginning of year	14	(226)	15	(230)	15	(238)
Purchase of treasury shares	2	(30)	3	(61)	3	(42)
Stock options exercised	-	11	(4)	65	(2)	35
Restricted shares issued	(1)	16	(2)	27	(1)	20
Restricted shares canceled	-	(4)	2	(27)	-	(5)
Balance at end of year	15	(233)	14	(226)	15	(230)
Unamortized Deferred Compensation:						
Balance at beginning of year		-		-		(55)
Cumulative effect of adoption of SFAS No. 123R		-		-		55
Balance at end of year		-		-		-
Total Shareholders' Equity		\$5,014		\$4,731		\$4,440
Comprehensive Income (Loss):						
Net income (loss)		\$86		\$268		\$(196)
Other comprehensive income (loss), net of tax		(9)		30		(11)
Total Comprehensive Income (Loss)		\$77		\$298		\$(207)

See accompanying notes.

CONSOLIDATED STATEMENTS OF CASH FLOWS

Three years ended September 27, 2008
in millions

	2008	2007	2006
Cash Flows From Operating Activities:			
Net income (loss)	\$ 86	\$ 268	\$ (196)
Adjustments to reconcile net income (loss) to cash provided by operating activities:			
Depreciation	468	482	481
Amortization	25	32	36
Deferred taxes	35	5	(130)
Cumulative effect of change in accounting principle, before tax	-	-	9
Impairment and write-down of assets	57	14	18
Other, net	26	(15)	30
(Increase) decrease in accounts receivable	(59)	(66)	43
(Increase) decrease in inventories	(376)	(166)	8
Increase in trade accounts payable	98	91	38
Increase (decrease) in income taxes payable/receivable	(22)	24	(132)
Increase (decrease) in interest payable	-	(35)	104
Net change in other current assets and liabilities	(50)	44	63
Cash Provided by Operating Activities	288	678	372
Cash Flows From Investing Activities:			
Additions to property, plant and equipment	(425)	(285)	(531)
Proceeds from sale of property, plant and equipment	26	76	21
Purchases of marketable securities	(115)	(131)	(191)
Proceeds from sale of marketable securities	112	147	214
Proceeds from sale of investments	22	-	-
Proceeds from sale (purchase) of short-term investment	-	770	(750)
Other, net	(19)	2	13
Cash Provided by (Used for) Investing Activities	(399)	579	(1,224)
Cash Flows From Financing Activities:			
Net borrowings (payments) on revolving credit facilities	(213)	53	158
Payments of debt	(147)	(1,263)	(166)
Net proceeds from borrowings	449	-	992
Net proceeds from Class A stock offering	274	-	-
Convertible note hedge transactions	(94)	-	-
Warrant transactions	44	-	-
Purchase of treasury shares	(30)	(61)	(42)
Dividends	(56)	(56)	(55)
Stock options exercised	9	74	32
Increase (decrease) in negative book cash balances	67	9	(85)
Other, net	18	(8)	10
Cash Provided by (Used for) Financing Activities	321	(1,252)	844
Effect of Exchange Rate Change on Cash	(2)	9	(4)
Increase (Decrease) in Cash and Cash Equivalents	208	14	(12)
Cash and Cash Equivalents at Beginning of Year	42	28	40
Cash and Cash Equivalents at End of Year	\$ 250	\$ 42	\$ 28

See accompanying notes.

TYSON FOODS, INC.**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****NOTE 1: BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Description of Business: Tyson Foods, Inc. (collectively, “Company,” “we,” “us” or “our”), founded in 1935 with world headquarters in Springdale, Arkansas, is the world’s largest processor and marketer of chicken, beef and pork and the second-largest food production company in the *Fortune* 500. We produce a wide variety of brand name protein-based and prepared food products marketed in the United States and more than 90 countries around the world. We are a recognized market leader in the retail and foodservice markets we serve. We have approximately 107,000 employees and more than 300 facilities and offices in 28 states and 22 countries.

Consolidation: The consolidated financial statements include the accounts of all wholly-owned subsidiaries, as well as majority-owned subsidiaries for which we have a controlling interest. All significant intercompany accounts and transactions have been eliminated in consolidation.

We have an investment in a joint venture, Dynamic Fuels LLC (Dynamic), in which we have a 50 percent ownership interest. Dynamic qualifies as a variable interest entity under Financial Accounting Standards Board (FASB) Interpretation No. 46(R) “Consolidation of Variable Interest Entities, an interpretation of ARB No. 51” (FIN 46(R)). Effective June 30, 2008, we began consolidating Dynamic since we are the primary beneficiary as defined by FIN 46(R).

Fiscal Year: We utilize a 52- or 53-week accounting period ending on the Saturday closest to September 30.

Reclassification: In the fourth quarter fiscal 2008, we began to manage and report the operating results and identifiable assets of our logistics operations in the segment in which the product being moved relates. As a result, our operating segments now reflect logistics operations which were previously included in Other. All prior periods have been restated to reflect this change.

Discontinued Operation: On June 25, 2008, we executed a letter of intent with XL Foods Inc. to sell the beef processing, cattle feed yard and fertilizer assets of Lakeside Farm Industries Ltd (Lakeside), our wholly-owned Canadian subsidiary. The financial statements report Lakeside as a discontinued operation. See Note 3: Discontinued Operation in the Notes to Consolidated Financial Statements for further information. Accordingly, all prior periods have been restated.

Cash and Cash Equivalents: Cash equivalents consist of investments in short-term, highly liquid securities having original maturities of three months or less, which are made as part of our cash management activity. The carrying values of these assets approximate their fair market values. We primarily utilize a cash management system with a series of separate accounts consisting of lockbox accounts for receiving cash, concentration accounts where funds are moved to, and several “zero-balance” disbursement accounts for funding payroll, accounts payable, livestock procurement, grower payments, etc. As a result of our cash management system, checks issued, but not presented to the banks for payment, may result in negative book cash balances. These negative book cash balances are included in trade accounts payable and other current liabilities. Checks outstanding in excess of related book cash balances totaled approximately \$322 million at September 27, 2008, and \$255 million at September 29, 2007.

Accounts Receivable: We record trade accounts receivable at net realizable value. This value includes an appropriate allowance for estimated uncollectible accounts to reflect any loss anticipated on the trade accounts receivable balances and charged to the provision for doubtful accounts. We calculate this allowance based on our history of write-offs, level of past due accounts and relationships with and economic status of our customers. We generally do not have collateral for our receivables, but we do periodically evaluate the credit worthiness of our customers.

Inventories: Processed products, livestock and supplies and other are valued at the lower of cost or market. Cost includes purchased raw materials, live purchase costs, growout costs (primarily feed, contract grower pay and catch and haul costs), labor and manufacturing and production overhead, which are related to the purchase and production of inventories.

	in millions	
	2008	2007
Processed products:		
Weighted-average method - chicken and prepared foods	\$ 920	\$ 773
First-in, first-out method - beef and pork	571	514
Livestock – first-in, first-out method	701	573
Supplies and other - weighted-average method	346	299
Total inventory	\$ 2,538	\$ 2,159

TYSON FOODS, INC.

Depreciation: We primarily use the straight-line method to calculate depreciation, using estimated lives for buildings and leasehold improvements of 10 to 33 years, machinery and equipment of three to 12 years and land improvements and other of three to 20 years.

Long-Lived Assets: We review the carrying value of long-lived assets at each balance sheet date if indication of impairment exists. Recoverability is assessed using undiscounted cash flows based on historical results and current projections of earnings before interest and taxes. We measure impairment as the excess of carrying cost over the fair value of an asset. The fair value of an asset is measured using discounted cash flows of future operating results based on a discount rate that corresponds to our cost of capital.

Goodwill and Other Intangible Assets: Goodwill and indefinite life intangible assets are initially recorded at fair value and not amortized, but are reviewed for impairment at least annually or more frequently if impairment indicators arise. Our goodwill is allocated by reporting unit, and we follow a two-step process to evaluate if a potential impairment exists. We have estimated the fair value of our reporting units using a discounted cash flow analysis. This analysis requires us to make various judgmental estimates and assumptions about sales, operating margins, growth rates and discount factors. While estimating the fair value of our Beef and Chicken reporting units, we assumed operating margins in future years in excess of the margins realized in the most recent year. The fair value estimates for these reporting units assume normalized operating margin assumptions and improved operating efficiencies based on long-term expectations and operating margins historically realized in the beef and chicken industries. As a result of the first step of our goodwill impairment review, a potential impairment did not exist; therefore, the second step was not considered necessary. While we believe we have made reasonable estimates and assumptions to determine the fair value of our reporting units, it is possible a material change could occur. If our actual results are not consistent with our estimates and assumptions used to calculate the fair value of our reporting units, we may be required to perform the second step which could result in a material impairment of our goodwill.

During the latter part of the fourth quarter of fiscal 2008 and continuing into November 2008, our market capitalization was below book value. While we considered the market capitalization decline in our evaluation of fair value of goodwill, we determined it did not impact the overall goodwill impairment analysis as we believe the decline to be primarily attributed to the negative market conditions as a result of the credit crisis, indications of a possible recession and current issues within the poultry industry. We will continue to monitor our market capitalization as a potential impairment indicator considering overall market conditions and poultry industry events.

The fair value of trademarks is determined using a royalty rate method based on expected revenues by trademark, and the fair value of our in-process patents is determined using the present value of estimated future cash flows.

Investments: We have investments in joint ventures and other entities. We use the cost method of accounting where our voting interests are less than 20 percent and the equity method of accounting where our voting interests are in excess of 20 percent, but we do not have a controlling interest or a variable interest in which we are the primary beneficiary. Investments in joint ventures and other entities are reported in the Consolidated Balance Sheets in Other Assets.

We have investments in marketable debt securities. As of September 27, 2008, and September 29, 2007, \$94 million, were classified in Other Assets in the Consolidated Balance Sheets, with maturities ranging up to 48 years. We have determined all our marketable debt securities are available-for-sale investments. These investments are reported at fair value based on quoted market prices as of the balance sheet date, with unrealized gains and losses, net of tax, recorded in other comprehensive income. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization is recorded in interest income. The cost of securities sold is based on the specific identification method. Realized gains and losses on the sale of debt securities and declines in value judged to be other than temporary are recorded on a net basis in other income. Interest and dividends on securities classified as available-for-sale are recorded in interest income.

Accrued Self Insurance: We use a combination of insurance and self-insurance mechanisms to provide for the potential liabilities for health and welfare, workers' compensation, auto liability and general liability risks. Liabilities associated with our risks retained are estimated, in part, by considering claims experience, demographic factors, severity factors and other actuarial assumptions.

TYSON FOODS, INC.

Capital Stock: We have two classes of capital stock, Class A Common Stock, \$0.10 par value (Class A stock) and Class B Common Stock, \$0.10 par value (Class B stock). Holders of Class B stock may convert such stock into Class A stock on a share-for-share basis. Holders of Class B stock are entitled to 10 votes per share, while holders of Class A stock are entitled to one vote per share on matters submitted to shareholders for approval. As of September 27, 2008, members of the Tyson family beneficially own, in the aggregate, 99.97% of the outstanding shares of Class B stock and 2.31% of the outstanding shares of Class A stock, giving the Tyson family control of approximately 70% of the total voting power of the outstanding voting stock. Cash dividends cannot be paid to holders of Class B stock unless they are simultaneously paid to holders of Class A stock. The per share amount of the cash dividend paid to holders of Class B stock cannot exceed 90% of the cash dividend simultaneously paid to holders of Class A stock. We pay quarterly cash dividends to Class A and Class B shareholders. We paid Class A dividends per share of \$0.16 and Class B dividends per share of \$0.144 in each of fiscal years 2008, 2007 and 2006.

The Class B stock is considered a participating security requiring the use of the two-class method for the computation of basic earnings per share. The two-class computation method for each period reflects the cash dividends paid for each class of stock, plus the amount of allocated undistributed earnings (losses) computed using the participation percentage, which reflects the dividend rights of each class of stock. Basic earnings per share were computed using the two-class method for all periods presented. The shares of Class B stock are considered to be participating convertible securities since the shares of Class B stock are convertible on a share-for-share basis into shares of Class A stock. Diluted earnings per share were computed assuming the conversion of the Class B shares into Class A shares as of the beginning of each period.

Financial Instruments: We purchase certain commodities, such as grains and livestock in the course of normal operations. As part of our commodity risk management activities, we use derivative financial instruments, primarily futures and options, to reduce our exposure to various market risks related to these purchases, as well as to changes in foreign currency exchange rates. Contract terms of a financial instrument qualifying as a hedge instrument closely mirror those of the hedged item, providing a high degree of risk reduction and correlation. Contracts designated and highly effective at meeting risk reduction and correlation criteria are recorded using hedge accounting. If a derivative instrument is accounted for as a hedge, changes in the fair value of the instrument will be offset either against the change in fair value of the hedged assets, liabilities or firm commitments through earnings or recognized in other comprehensive income (loss) until the hedged item is recognized in earnings. The ineffective portion of an instrument's change in fair value is immediately recognized in earnings as a component of cost of sales. Instruments we hold as part of our risk management activities that do not meet the criteria for hedge accounting are marked to fair value with unrealized gains or losses reported currently in earnings. Changes in market value of derivatives used in our risk management activities relating to forward sales contracts are recorded in sales. Changes in market value of derivatives used in our risk management activities surrounding inventories on hand or anticipated purchases of inventories or supplies are recorded in cost of sales. We generally do not hedge anticipated transactions beyond 12 months.

Revenue Recognition: We recognize revenue when title and risk of loss are transferred to customers, which is generally on delivery based on terms of sale. Revenue is recognized as the net amount estimated to be received after deducting estimated amounts for discounts, trade allowances and product terms.

Litigation Reserves: There are a variety of legal proceedings pending or threatened against us. Accruals are recorded when it is probable a liability has been incurred and the amount of the liability can be reasonably estimated based on current law, progress of each case, opinions and views of legal counsel and other advisers, our experience in similar matters and intended response to the litigation. These amounts, which are not discounted and are exclusive of claims against third parties, are adjusted periodically as assessment efforts progress or additional information becomes available. We expense amounts for administering or litigating claims as incurred. Accruals for legal proceedings are included in Other current liabilities in the Consolidated Balance Sheets.

Freight Expense: Freight expense associated with products shipped to customers is recognized in cost of sales.

Advertising and Promotion Expenses: Advertising and promotion expenses are charged to operations in the period incurred. Customer incentive and trade promotion activities are recorded as a reduction to sales based on amounts estimated as being due to customers, based primarily on historical utilization and redemption rates, while other advertising and promotional activities are recorded as selling, general and administrative expenses. Advertising and promotion expenses for fiscal years 2008, 2007 and 2006 were \$495 million, \$467 million and \$493 million, respectively.

TYSON FOODS, INC.

Use of Estimates: The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States, which require us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Recently Issued Accounting Pronouncements: In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, "Fair Value Measurements" (SFAS No. 157). SFAS No. 157 provides guidance for using fair value to measure assets and liabilities. This standard also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value and the effect of fair value measurements on earnings. SFAS No. 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value. Beginning September 28, 2008, we partially applied SFAS No. 157 as allowed by FASB Staff Position (FSP) 157-2, which delayed the effective date of SFAS No. 157 for nonfinancial assets and liabilities. As of September 28, 2008, we have applied the provisions of SFAS No. 157 to our financial instruments and the impact was not material. Under FSP 157-2, we will be required to apply SFAS No. 157 to our nonfinancial assets and liabilities at the beginning of fiscal 2010. We are currently reviewing the applicability of SFAS No. 157 to our nonfinancial assets and liabilities as well as the potential impact on our consolidated financial statements.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115" (SFAS No. 159). This statement provides companies with an option to report selected financial assets and liabilities firm commitments, and nonfinancial warranty and insurance contracts at fair value on a contract-by-contract basis, with changes in fair value recognized in earnings each reporting period. At September 28, 2008, we did not elect the fair value option under SFAS No. 159 and therefore there was no impact to our consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, "Noncontrolling Interests in Consolidated Financial Statements" (SFAS No. 160). SFAS No. 160 amends Accounting Research Bulletin No. 51, "Consolidated Financial Statements" to establish accounting and reporting standards for a noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity and should be reported as equity in the consolidated financial statements, rather than in the liability or mezzanine section between liabilities and equity. SFAS No. 160 also requires consolidated net income be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. The impact of SFAS No. 160 will not have a material impact on our current Consolidated Financial Statements. SFAS No. 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008; therefore, we expect to adopt SFAS No. 160 at the beginning of fiscal 2010.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141R, "Business Combinations" (SFAS No. 141R). SFAS No. 141R establishes principles and requirements for how an acquirer in a business combination: 1) recognizes and measures in its financial statements identifiable assets acquired, liabilities assumed, and any noncontrolling interest in the acquiree; 2) recognizes and measures goodwill acquired in a business combination or a gain from a bargain purchase; and 3) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of a business combination. SFAS No. 141R is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008; therefore, we expect to adopt SFAS No. 141R for any business combinations entered into beginning in fiscal 2010.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, "Disclosures about Derivative Instruments and Hedging Activities - an amendment of FASB Statement No. 133" (SFAS No. 161). SFAS No. 161 establishes enhanced disclosure requirements about: 1) how and why an entity uses derivative instruments; 2) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations; and 3) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008; therefore, we expect to adopt SFAS No. 161 in the second quarter of fiscal 2009.

In May 2008, the FASB issued FASB Staff Position No. APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)" (FSP APB 14-1). FSP APB 14-1 specifies that issuers of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. The amount allocated to the equity component represents a discount to the debt, which is amortized into interest expense using the effective interest method over the life of the debt. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Early adoption is not permitted. Therefore, we expect to adopt the provisions of FSP APB 14-1 beginning in the first quarter of fiscal 2010. The provisions of FSP APB 14-1 are required to be applied retrospectively to all periods presented. Upon retrospective adoption, we anticipate our effective interest rate on our 3.25% Convertible Senior Notes due 2013 will range from 8.0% to 8.50%, which would result in the recognition of an approximate \$90 million to \$100 million discount to these notes with the offsetting after tax amount recorded to capital in excess of par value. This discount will be accreted until the maturity date at the effective interest rate, which will

TYSON FOODS, INC.

not materially impact fiscal 2008 interest expense, but will result in an estimated \$15 million to \$20 million increase to our fiscal 2009 interest expense.

NOTE 2: CHANGE IN ACCOUNTING PRINCIPLES

In June 2006, the Financial Accounting Standards Board (FASB) issued Interpretation No. 48, "Accounting for Uncertainty in Income Taxes," an interpretation of FASB Statement No. 109 (FIN 48). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. We adopted FIN 48 at the beginning of fiscal 2008. The adoption of FIN 48 resulted in a change to the opening Consolidated Balance Sheet as follows: \$32 million increase to Other Current Assets, \$17 million decrease to Other Current Liabilities, \$106 million increase to Other Liabilities, \$40 million decrease to Deferred Income Taxes and \$17 million decrease to Retained Earnings. Included in these changes we recognized a \$120 million increase in the liability for unrecognized tax benefits and a \$21 million increase in the related liability for interest and penalties for a total of \$141 million.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)" (SFAS No. 158). SFAS No. 158 requires companies to recognize the funded status of a defined benefit postretirement plan as an asset or liability in its consolidated balance sheet and to recognize changes in funded status in the year in which the changes occur through other comprehensive income. We adopted SFAS No. 158 at the end of fiscal 2007 except for the requirement to measure the funded status of a plan as of the date of its annual consolidated balance sheet, which we adopted in fiscal 2008 and which had an immaterial impact. See Note 13, "Pensions and Other Postretirement Benefits" in the Notes to Consolidated Financial Statements for the impact of the adoption of SFAS No. 158.

In March 2005, the FASB issued FIN 47, an interpretation of SFAS No. 143. SFAS No. 143 was issued in June 2001 and requires an entity to recognize the fair value of a liability for an asset retirement obligation in the period in which it is incurred if a reasonable estimate of fair value can be made. SFAS No. 143 applies to legal obligations associated with the retirement of a tangible long-lived asset that resulted from the acquisition, construction, development and/or the normal operation of a long-lived asset. The associated asset costs are capitalized as part of the carrying amount of the long-lived asset. FIN 47 clarifies the term "conditional asset retirement obligation" as used in SFAS No. 143, which refers to a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement are conditional on a future event that may or may not be within the control of the entity. FIN 47 requires an entity to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value of the liability can be estimated reasonably. Uncertainty about the timing and/or method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. SFAS No. 143 acknowledges in some cases, sufficient information may not be available to reasonably estimate the fair value of an asset retirement obligation (ARO). We adopted FIN 47 in the fourth quarter of fiscal 2006. In connection with the adoption, an ARO liability of \$12 million, a related ARO asset of \$3 million and a cumulative adjustment due to change in accounting principle, net of tax of \$5 million were recorded. The ARO liability is included in Other Liabilities and the ARO asset is included in Property, Plant and Equipment on the Consolidated Balance Sheets. The principal conditional asset retirement obligations relate to the potential future closure, sale or other disposal of certain production facilities. In connection with any such activity, we are legally obligated under various federal, state and local laws to properly retire the related wastewater treatment facility.

NOTE 3: DISCONTINUED OPERATION

On June 25, 2008, we executed a letter of intent with XL Foods Inc. to sell the beef processing, cattle feed yard and fertilizer assets of Lakeside for \$104 million. Lakeside was part of our Beef segment. XL Foods will pay an additional amount for cattle inventory, fertilizer inventory and packaging assets, estimated to approximate \$82 million. This transaction is denominated in Canadian Dollars, thus conversion at the closing date to US Dollars could result in amounts in US Dollars different than noted. We will retain certain working capital items, including finished product inventory, accounts receivable and accounts payable, of the Lakeside operation as of the closing date, which totaled \$89 million at September 27, 2008. Once the transaction is complete, we expect retained working capital, including inventory, at Lakeside will be liquidated and settled over a two-month period.

Approximately \$60 million of Beef segment goodwill relates to Lakeside. In addition, at September 27, 2008, we had \$60 million of currency translation adjustment gain in accumulated comprehensive income related to the Lakeside Canadian dollar translation. Subsequent to September 27, 2008, the Canadian dollar weakened versus the US dollar, which may result in a decrease in the currency translation adjustment gain.

The transaction remains subject to government approvals and execution of a definitive agreement between Tyson and XL Foods. Subject to receipt of such approvals, we anticipate being ready to complete the sale by the end of the first quarter fiscal 2009 and are reporting the Lakeside results as a discontinued operation.

TYSON FOODS, INC.

The following is a summary of Lakeside's operating results (in millions):

	2008		2007		2006
Sales	\$	1,268	\$	1,171	\$ 970
Pretax loss		-		-	25

The carrying amounts of Lakeside's assets held for sale include the following (in millions):

	2008		2007	
Assets of discontinued operation held for sale:				
Inventories	\$	82	\$	79
Net property, plant and equipment		77		85
Total assets of discontinued operation held for sale	\$	159	\$	164

NOTE 4: DISPOSITIONS AND OTHER CHARGES

In fiscal 2008, we recorded charges of \$10 million related to intangible asset impairments. Of this amount, \$8 million is reflected in the Beef segment's Operating Income and \$2 million in the Prepared Foods segment's Operating Income, and both are recorded in the Consolidated Statements of Operations in Cost of Sales. We recorded estimated charges of \$7 million related to flood damage at our Jefferson, Wisconsin, plant. This amount is reflected in the Prepared Foods segment's Operating Income and included in the Consolidated Statements of Operations in Cost of Sales. We also recorded a charge of \$6 million related to the impairment of unimproved real property in Memphis, Tennessee. This amount is reflected in the Chicken segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Cost of Sales. Additionally, we recorded an \$18 million non-operating gain as the result of a private equity firm's purchase of a technology company in which we held a minority interest. This gain was recorded in Other Income in the Consolidated Statements of Operations.

In February 2008, we announced discontinuation of an existing product line and closing of one of our three poultry plants in Wilkesboro, North Carolina. The Wilkesboro Cooked Products plant ceased operations during the second quarter of fiscal 2008. The closure resulted in elimination of approximately 400 jobs. In fiscal 2008, we recorded charges of \$13 million for estimated impairment charges. This amount is reflected in the Chicken segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other Charges. No material adjustments to the accrual are anticipated.

In January 2008, we announced the decision to restructure operations at our Emporia, Kansas, beef plant. Beef slaughter operations ceased during the second quarter of fiscal 2008. However, the facility will still be used to process certain commodity, specialty cuts and ground beef, as well as a cold storage and distribution warehouse. This restructuring resulted in elimination of approximately 1,700 jobs at the Emporia plant. In fiscal 2008, we recorded charges of \$10 million for estimated impairment charges and \$7 million of other closing costs, consisting of \$6 million for employee termination benefits and \$1 million in other plant-closing related liabilities. These amounts were reflected in the Beef segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other Charges. We have fully paid the employee termination benefits and other plant-closing related liabilities. No material adjustments to the accrual are anticipated.

In fiscal 2008, management approved plans for implementation of certain recommendations resulting from the previously announced FAST initiative, which was focused on process improvement and efficiency creation. As a result, in fiscal 2008, we recorded charges of \$6 million related to employee termination benefits resulting from termination of approximately 200 employees. Of these charges, \$2 million, \$2 million, \$1 million and \$1 million, respectively, were recorded in the Chicken, Beef, Pork and Prepared Foods segments' Operating Income (Loss) and included in the Consolidated Statements of Operations in Other Charges. We have fully paid the employee termination benefits. No material adjustments to the accrual are anticipated.

In May 2007, we announced the completion of the sale of two of our Alabama poultry plants and related support facilities. As part of strategic efforts to reduce the production of commodity chicken, we sold our processing plants in Ashland and Gadsden, which also included a nearby feed mill and two hatcheries. These facilities employed approximately 1,200 employees, of which approximately 800 were hired by the acquiring company, while the remaining employees were offered the opportunity to transfer to our other operations in Alabama. We recorded a gain of \$10 million on the sale in fiscal 2007. The gain was recorded in the Chicken segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Cost of Sales.

In July 2006, we announced our decision to implement a Cost Management Initiative as part of a strategy to return to profitability. The cost reductions include staffing costs, consulting and professional fees, sales and marketing costs and other expenses. In fiscal 2006, we recorded charges of approximately \$9 million for employee termination benefits resulting from the termination of approximately 400 employees. Of these charges, \$4 million, \$3 million, \$1 million and \$1 million, respectively, were included in the Chicken, Beef, Pork and Prepared Foods segments' Operating Income (Loss) and included in the Consolidated Statements of Operations in Other

TYSON FOODS, INC.

charges in the period ending September 30, 2006. In fiscal 2007, there were no material adjustments to amounts accrued. We have fully paid the estimated employee termination benefits. No material adjustments to the accrual are anticipated.

In August 2006, we announced our decision to close the Boise, Idaho, beef slaughter plant and to scale back processing operations at our Pasco, Washington, complex. This decision resulted in the elimination of approximately 770 positions. The closure and processing change occurred in October 2006 and did not result in a significant charge.

In February 2006, we announced our decision to close the Norfolk, Nebraska, beef processing plant and the West Point, Nebraska, beef slaughter plant. These facilities closed in February 2006. Production from these facilities was shifted primarily to our beef complex in Dakota City, Nebraska. Combined, these two facilities employed approximately 1,665 employees. We sold the West Point plant in fiscal 2007, while the Norfolk plant and related property are currently offered for sale. In fiscal 2006, we recorded charges of \$38 million for estimated impairment charges and \$9 million of other closing costs, consisting of \$5 million for employee termination benefits and \$4 million in other plant closing related liabilities. These amounts were reflected in the Beef segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other charges. We have fully paid the estimated employee termination benefits and other plant closing related liabilities. No material adjustments to the accrual are anticipated.

In January 2006, we announced our decision to close two processed meats facilities in northeast Iowa. The Independence and Oelwein plants, which produced chopped ham and sliced luncheon meats, closed in March 2006. Combined, these two facilities employed approximately 400 employees. Equipment from these facilities was removed and either sold or transferred to our other locations, while the plants and related property are currently offered for sale. In fiscal 2006, we recorded charges of \$12 million for estimated impairment charges and \$1 million for employee termination benefits. These amounts were reflected in the Prepared Foods segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other charges. We have fully paid the estimated employee termination benefits. No material adjustments to the accrual are anticipated.

NOTE 5: FINANCIAL INSTRUMENTS

We had derivative related balances of \$29 million and \$16 million recorded in other current assets at September 27, 2008, and September 29, 2007, respectively, and \$45 million and \$48 million in other current liabilities at September 27, 2008, and September 29, 2007, respectively.

Cash flow hedges: Derivative products, such as futures and options, are designated as hedges against changes in the amount of future cash flows related to commodities procurement. We do not purchase derivative products related to grain procurement in excess of our physical grain consumption requirements. Related to our grain hedges, there were \$5 million of net losses recorded in accumulated other comprehensive income at September 27, 2008. These losses will be recognized within the next 12 months. Of these losses, the portion resulting from our open hedge positions was a net loss of \$4 million as of September 27, 2008. Ineffectiveness related to our cash flow hedges was not significant during fiscal 2008, 2007 or 2006.

Fair value hedges: We designate certain futures contracts as fair value hedges of firm commitments to purchase livestock for slaughter. Changes in the fair value of a derivative that is designated and qualifies as a fair value hedge, along with changes in fair value of the hedged asset or liability attributable to the hedged risk (including gains or losses on firm commitments), are recorded in current period earnings. Ineffectiveness results when the change in the fair value of the hedge instrument differs from the change in fair value of the hedged item. Ineffectiveness related to fair value hedges was not significant during fiscal 2008, 2007 and 2006.

During fiscal 2006, we discontinued the use of hedge accounting for certain financial instruments to hedge forward cattle purchases. Hedge accounting was discontinued to provide a natural offset to the gains and losses resulting from our derivatives tied to forward fixed price sales of boxed beef, as this activity does not qualify for hedge accounting. The contracts for which hedge accounting was discontinued had a fair value of approximately \$28 million at the discontinued date, and was primarily recognized as a component of cost of sales in fiscal 2006. However, due to changes in our beef market strategies and business conditions, we now have more forward cattle purchase derivatives relative to fixed forward boxed beef sales derivatives which can and have caused mark-to-market earnings volatility. Accordingly, effective in the fourth quarter fiscal 2008, we began designating certain futures contracts as fair value hedges of forward cattle purchases. We anticipate this change will help reduce volatility of quarterly reported beef earnings.

Undesignated positions: We hold positions as part of our risk management activities, primarily futures and options for grains and livestock, for which we do not apply hedge accounting, but instead mark these positions to fair value through earnings at each reporting date. We generally do not enter into undesignated positions beyond 18 months. Related to grain positions for which we did not apply hedge accounting, we recognized pretax net gains of approximately \$169 million, \$50 million and \$8 million, respectively, in cost of sales for fiscal 2008, 2007 and 2006, which included an unrealized pretax loss on open mark-to-market futures positions of \$4 million as of September 27, 2008.

We enter into certain forward sales of boxed beef and boxed pork and forward purchases of cattle at fixed prices. The fixed price sales contracts lock in the proceeds from a sale in the future and the fixed cattle purchases lock in the cost. However, the cost of the livestock and the related boxed beef and boxed pork market prices at the time of the sale or purchase could vary from this fixed price.

TYSON FOODS, INC.

As we enter into fixed forward sales of boxed beef and boxed pork and forward purchases of cattle, we also enter into the appropriate number of livestock futures positions to mitigate a portion of this risk. Changes in market value of the open livestock futures positions are marked to market and reported in earnings at each reporting date, even though the economic impact of our fixed prices being above or below the market price is only realized at the time of sale or purchase. In connection with these livestock futures, we recorded realized and unrealized net gains of \$83 million in fiscal 2008, which included an unrealized pretax gain on open mark-to-market futures positions of approximately \$3 million as of September 27, 2008. We recorded realized and unrealized net gains of \$14 million and realized and unrealized net losses of \$39 million in fiscal 2007 and 2006, respectively, related to livestock futures positions.

Additionally, we enter into grain derivatives to manage the risk of costs associated with forward sales to certain customers for which sales prices are determined under cost-plus arrangements. These unrealized positions, which do not qualify for hedge treatment, totaled a loss of \$24 million and a gain of \$9 million at September 27, 2008, and September 29, 2007, respectively. When these positions are liquidated, we expect any realized gains or losses will be reflected in the prices of the poultry products sold. Since these derivative positions do not qualify for hedge treatment, they initially create volatility in our income statement associated with mark-to-market changes. However, once the positions are liquidated and included in the sales price to the customer, there is ultimately no income statement impact as any previous mark-to-market gains or losses are included in the prices of the poultry products.

Foreign currency positions: We enter into foreign currency forward contracts to manage the risk from changes in the fair value or future cash flows of receivables, payables and purchase commitments arising from changes in the exchange rates of foreign currencies. We have not applied hedge accounting to these contracts. The fair value of the foreign exchange contracts was not significant as of September 27, 2008, and September 29, 2007.

Fair Values of Financial Instruments:

	in millions	
	2008	2007
Commodity derivative positions, net liability	\$ 16	\$ 32
Total debt	2,659	2,927

Fair values are based on quoted market prices or published forward interest rate curves. Carrying values for derivative positions equal the fair values as of September 27, 2008, and September 29, 2007, and the carrying value of total debt was \$2.9 billion and \$2.8 billion, respectively. All other financial instruments' fair values approximate recorded values at September 27, 2008, and September 29, 2007.

Concentrations of Credit Risk: Our financial instruments exposed to concentrations of credit risk consist primarily of cash equivalents and trade receivables. Cash equivalents are in high quality securities placed with major banks and financial institutions. Concentrations of credit risk with respect to receivables are limited due to the large number of customers and their dispersion across geographic areas. We perform periodic credit evaluations of our customers' financial condition and generally do not require collateral. At September 27, 2008, and September 29, 2007, 12.2% and 12.1%, respectively, of our net accounts receivable balance was due from Wal-Mart Stores, Inc. No other single customer or customer group represents greater than 10% of net accounts receivable.

NOTE 6: PROPERTY, PLANT AND EQUIPMENT

Major categories of property, plant and equipment and accumulated depreciation at cost, at September 27, 2008, and September 29, 2007:

	in millions	
	2008	2007
Land	\$ 89	\$ 99
Building and leasehold improvements	2,440	2,423
Machinery and equipment	4,382	4,255
Land improvements and other	210	200
Buildings and equipment under construction	352	245
	7,473	7,222
Less accumulated depreciation	3,954	3,614
Net property, plant and equipment	\$ 3,519	\$ 3,608

Approximately \$228 million will be required to complete buildings and equipment under construction at September 27, 2008.

TYSON FOODS, INC.**NOTE 7: GOODWILL AND OTHER INTANGIBLE ASSETS**

Goodwill by segment, net of \$286 million of accumulated amortization at September 27, 2008, and September 29, 2007:

	in millions	
	2008	2007
Chicken	\$ 945	\$ 921
Beef	1,185	1,182
Pork	317	317
Prepared Foods	64	65
Total Goodwill	\$ 2,511	\$ 2,485

Other intangible assets by type at September 27, 2008, and September 29, 2007:

	in millions	
	2008	2007
Gross Carrying Value:		
Trademarks	\$ 62	\$ 66
Patents	50	50
In-process patents	27	35
Intellectual property	17	-
Less Accumulated Amortization:		
Patents and intellectual property	28	25
Total Intangible Assets	\$ 128	\$ 126

Amortization expense on patents and intellectual property of \$3 million was recognized during each of fiscal years 2008, 2007 and 2006. We estimate amortization expense on intangible assets will be \$5 million in each of the next five years. Patents and intellectual property are amortized using the straight-line method over their estimated period of benefit of five to 15 years and 30 years, respectively, beginning with the date benefits from intangible items are realized.

NOTE 8: OTHER CURRENT LIABILITIES

Other current liabilities at September 27, 2008, and September 29, 2007, include:

	in millions	
	2008	2007
Accrued salaries, wages and benefits	\$ 259	\$ 249
Self-insurance reserves	236	259
Other	383	420
Total other current liabilities	\$ 878	\$ 928

TYSON FOODS, INC.**NOTE 9: COMMITMENTS**

We lease equipment, properties and certain farms for which total rentals approximated \$163 million, \$133 million and \$146 million, respectively, in fiscal years 2008, 2007 and 2006. Most leases have terms up to seven years with varying renewal periods. The most significant obligations assumed under the terms of the leases are the upkeep of the facilities and payments of insurance and property taxes.

Minimum lease commitments under non-cancelable leases at September 27, 2008	in millions
2009	\$ 80
2010	61
2011	41
2012	30
2013	18
2014 and beyond	23
Total	\$ 253

We guarantee debt of outside third parties, which consist of a lease and grower loans, all of which are substantially collateralized by the underlying assets. Terms of the underlying debt cover periods up to nine years, and the maximum potential amount of future payments as of September 27, 2008, was \$66 million. We also maintain operating leases for various types of equipment, some of which contain residual value guarantees for the market value of assets at the end of the term of the lease. The terms of the lease maturities cover periods up to seven years. The maximum potential amount of the residual value guarantees is approximately \$55 million, of which approximately \$21 million would be recoverable through various recourse provisions and an undeterminable recoverable amount based on the fair market value of the underlying leased assets. The likelihood of material payments under these guarantees is not considered probable. At September 27, 2008, and September 29, 2007, no material liabilities for guarantees were recorded.

Additionally, we enter into future purchase commitments for various items, such as grains, livestock contracts and fixed grower fees. At September 27, 2008, these commitments totaled:

	in millions
2009	\$ 710
2010	42
2011	31
2012	13
2013	7
2014 and beyond	24
Total	\$ 827

TYSON FOODS, INC.

NOTE 10: LONG-TERM DEBT

		in millions	
	Maturity	2008	2007
Revolving credit facility	2010	\$ -	\$ -
Accounts receivable securitization facility	2009, 2010	-	213
Senior notes (rates ranging from 7.00% to 8.25%)	2010–2028	2,400	2,475
3.25% Convertible senior notes	2013	458	-
Lakeside term loan	-	-	25
Other	Various	38	66
Total debt		2,896	2,779
Less current debt		8	137
Total long-term debt		\$ 2,888	\$ 2,642

Annual maturities of long-term debt for the five fiscal years subsequent to September 27, 2008, are: 2009-\$8 million; 2010-\$240 million; 2011-\$1.0 billion; 2012-\$3 million; 2013-\$2 million.

Revolving Credit Facility

We have a revolving credit facility totaling \$1.0 billion that supports short-term funding needs and letters of credit. The facility expires in September 2010. At September 27, 2008, we had outstanding letters of credit totaling approximately \$291 million, none of which were drawn upon, issued primarily in support of workers' compensation insurance programs and derivative activities. The amount available for borrowings under this facility as of September 27, 2008, was \$709 million. All trademarks of our domestic subsidiaries are pledged as collateral under this facility. Additionally, certain domestic subsidiaries guaranteed this facility and pledged their inventory as collateral, which had a book value of \$2.0 billion at September 27, 2008.

Accounts Receivable Securitization Facility

We have a receivables purchase agreement with three co-purchasers to sell up to \$750 million of trade receivables. The agreement includes a \$375 million 364-day facility expiring in August 2009 and a \$375 million 364-day facility with an additional one-year option, which commits funding through August 2010. The receivables purchase agreement has been accounted for as a borrowing and has an interest rate based on commercial paper issued by the co-purchasers. Under this agreement, substantially all of our accounts receivable may be sold to a special purpose entity, Tyson Receivables Corporation (TRC), which is a wholly-owned consolidated subsidiary of the Company. TRC has its own creditors who are entitled to be satisfied out of all of the assets of TRC prior to any value becoming available to the Company as TRC's equity holder. At September 27, 2008, there were no amounts borrowed under the receivables purchase agreement.

3.25% Convertible Senior Notes due 2013

In September 2008, we issued \$458 million principal amount 3.25% convertible senior unsecured notes due October 15, 2013 (Convertible Notes), with interest paid semi-annually in arrears on April 15 and October 15. The conversion rate initially is 59.1935 shares of Class A stock per \$1,000 principal amount of notes, which is equivalent to an initial conversion price of \$16.89 per share of Class A stock. The Convertible Notes may be converted before the close of business on July 12, 2013, only under the following circumstances:

- during any fiscal quarter after December 27, 2008, if the last reported sale price of our Class A stock for at least 20 trading days during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is at least 130% of the applicable conversion price on each applicable trading day (which would currently require our shares to trade at or above \$21.96); or
- during the five business days after any 10 consecutive trading days (measurement period) in which the trading price per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our Class A stock and the applicable conversion rate on each such day; or
- upon the occurrence of specified corporate events as defined in the supplemental indenture.

On and after July 15, 2013, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their notes at any time, regardless of the foregoing circumstances. Upon conversion, we will deliver cash up to the aggregate principal amount of the Convertible Notes to be converted and shares of our Class A stock in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the Convertible Notes being converted.

The Convertible Notes were accounted for as a combined instrument pursuant to EITF Issue 90-19, "Convertible Bonds with Issuer Option to Settle for Cash upon Conversion." Accordingly, we accounted for the entire agreement as one debt instrument because the conversion feature does not meet the requirements to be accounted for separately as a derivative financial instrument.

TYSON FOODS, INC.

Convertible Note Hedge and Warrant Transactions

In connection with the issuance of the Convertible Notes, we entered into separate convertible note hedge transactions with respect to our common stock to minimize the potential economic dilution upon conversion of the Convertible Notes. We also entered into separate warrant transactions. We recorded the purchase of the note hedge transactions as a reduction to capital in excess of par value, net of \$36 million pertaining to the related deferred tax asset, and we recorded the proceeds of the warrant transactions as an increase to capital in excess of par value. Subsequent changes in fair value of these instruments are not recognized in the financial statements as long as the instruments continue to meet the criteria for equity classification.

We purchased call options in private transactions for \$94 million that permit us to acquire up to approximately 27 million shares of our Class A stock at an initial strike price of \$16.89 per share, subject to adjustment. The call options allow us to acquire a number of shares of our Class A stock initially equal to the number of shares of Class A stock issuable to the holders of the Convertible Notes upon conversion. These call options will terminate upon the maturity of the Convertible Notes.

We sold warrants in private transactions for total proceeds of \$44 million. The warrants permit the purchasers to acquire up to approximately 27 million shares of our Class A stock at an initial exercise price of \$22.31 per share, subject to adjustment. The warrants are exercisable on various dates from January 2014 through March 2014.

These transactions, in effect, increase the initial conversion price of the Convertible Notes from \$16.89 per share to \$22.31 per share, thus reducing the potential future economic dilution associated with conversion of the Convertible Notes. The Convertible Notes and the warrants could have a dilutive effect on our earnings per share to the extent the price of our Class A stock during a given measurement period exceeds the respective exercise prices of those instruments. The call options are excluded from the calculation of diluted earnings per share as their impact is anti-dilutive.

Credit Ratings

On September 4, 2008, S&P downgraded the credit rating applicable to the senior notes due April 1, 2016 (2016 Notes) from “BBB-“ to “BB.” This downgrade increased the interest rate on the 2016 Notes from 6.85% to 7.35%, effective beginning with the six month interest payment due October 1, 2008.

On November 13, 2008, Moody’s downgraded the credit rating from “Ba1” to “Ba3.” This downgrade increased the interest rate on the 2016 Notes from 7.35% to 7.85%, effective beginning with the six month interest payment due April 1, 2009.

Debt Covenants

Our debt agreements contain various covenants, the most restrictive of which contain maximum allowed leverage ratios and a minimum required interest coverage ratio. On September 10, 2008, we amended our revolving credit facility agreement to provide a less restrictive maximum allowed leverage ratio, which takes effect in first quarter of fiscal 2009. We were in compliance with all covenants at September 27, 2008.

Tyson Fresh Meats, Inc. (TFM), a wholly-owned subsidiary of the Company, has fully and unconditionally guaranteed \$960 million of our 2016 Notes. The following financial information presents condensed consolidating financial statements, which include Tyson Foods, Inc. (TFI Parent); Tyson Fresh Meats, Inc. (TFM Parent); the Non-Guarantor Subsidiaries on a combined basis; the elimination entries necessary to consolidate the TFI Parent, TFM Parent and the Non-Guarantor Subsidiaries; and Tyson Foods, Inc. on a consolidated basis, is provided as an alternative to providing separate financial statements for the guarantor.

TYSON FOODS, INC.

Condensed Consolidating Statement of Income for the year ended September 27, 2008

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Net Sales	\$ 9	\$ 15,638	\$ 12,052	\$ (837)	\$ 26,862
Cost of Sales	154	15,105	11,194	(837)	25,616
	(145)	533	858	-	1,246
Operating Expenses:					
Selling, general and administrative	118	193	568	-	879
Other charges	1	18	17	-	36
Operating Income (Loss)	(264)	322	273	-	331
Other (Income) Expense:					
Interest expense, net	181	17	8	-	206
Other, net	(13)	(5)	(11)	-	(29)
Equity in net earnings of subsidiaries	(325)	(10)	-	335	-
	(157)	2	(3)	335	177
Income (Loss) from Continuing Operations before Income Taxes	(107)	320	276	(335)	154
Income Tax Expense (Benefit)	(193)	138	123	-	68
Income from Continuing Operations	86	182	153	(335)	86
Income from Discontinued Operation	-	-	-	-	-
Net Income	\$ 86	\$ 182	\$ 153	\$ (335)	\$ 86

Condensed Consolidating Statement of Income for the year ended September 29, 2007

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Net Sales	\$ 165	\$ 15,189	\$ 11,264	\$ (889)	\$ 25,729
Cost of Sales	(49)	14,885	10,353	(889)	24,300
	214	304	911	-	1,429
Operating Expenses:					
Selling, general and administrative	108	173	533	-	814
Other charges	1	1	-	-	2
Operating Income	105	130	378	-	613
Other (Income) Expense:					
Interest expense, net	186	29	9	-	224
Other, net	(1)	(24)	4	-	(21)
Equity in net earnings of subsidiaries	(321)	(50)	-	371	-
	(136)	(45)	13	371	203
Income from Continuing Operations before Income Taxes	241	175	365	(371)	410
Income Tax Expense (Benefit)	(27)	43	126	-	142
Income from Continuing Operations	268	132	239	(371)	268
Income from Discontinued Operation	-	-	-	-	-
Net Income	\$ 268	\$ 132	\$ 239	\$ (371)	\$ 268

TYSON FOODS, INC.

Condensed Consolidating Statement of Operations for the year ended September 30, 2006

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Net Sales	\$ -	\$ 14,227	\$ 11,097	\$ (735)	\$ 24,589
Cost of Sales	3	14,206	10,165	(735)	23,639
	(3)	21	932	-	950
Operating Expenses:					
Selling, general and administrative	130	201	599	-	930
Other charges	-	51	19	-	70
Operating Income (Loss)	(133)	(231)	314	-	(50)
Other (Income) Expense:					
Interest expense, net	192	35	11	-	238
Other, net	(3)	(3)	(14)	-	(20)
Equity in net earnings of subsidiaries	(14)	(13)	-	27	-
	175	19	(3)	27	218
Income (Loss) from Continuing Operations before Income Taxes	(308)	(250)	317	(27)	(268)
Income Tax Expense (Benefit)	(112)	(92)	110	-	(94)
Income (Loss) from Continuing Operations	(196)	(158)	207	(27)	(174)
Loss from Discontinued Operation	-	-	(17)	-	(17)
Income (Loss) before Cumulative Effect of Change in Accounting Principle	(196)	(158)	190	(27)	(191)
Cumulative Effect of Change in Accounting Principle, Net of Tax	-	(1)	(4)	-	(5)
Net Income (Loss)	\$ (196)	\$ (159)	\$ 186	\$ (27)	\$ (196)

TYSON FOODS, INC.

Condensed Consolidating Balance Sheet as of September 27, 2008

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Assets					
Current Assets:					
Cash and cash equivalents	\$ 140	\$ -	\$ 110	\$ -	\$ 250
Accounts receivable, net	1	726	1,353	(809)	1,271
Inventories	1	724	1,813	-	2,538
Other current assets	261	46	76	(240)	143
Assets of discontinued operation held for sale	-	-	159	-	159
Total Current Assets	403	1,496	3,511	(1,049)	4,361
Net Property, Plant and Equipment	43	960	2,516	-	3,519
Goodwill	-	1,502	1,009	-	2,511
Intangible Assets	-	47	81	-	128
Other Assets	147	91	159	(66)	331
Investment in subsidiaries	8,593	1,000	-	(9,593)	-
Total Assets	\$ 9,186	\$ 5,096	\$ 7,276	\$ (10,708)	\$ 10,850
Liabilities and Shareholders' Equity					
Current Liabilities:					
Current debt	\$ 8	\$ -	\$ -	\$ -	\$ 8
Trade accounts payable	108	486	623	-	1,217
Other current liabilities	1,090	272	565	(1,049)	878
Total Current Liabilities	1,206	758	1,188	(1,049)	2,103
Long-Term Debt	2,632	249	7	-	2,888
Deferred Income Taxes	-	50	307	(66)	291
Other Liabilities	334	105	115	-	554
Shareholders' Equity	5,014	3,934	5,659	(9,593)	5,014
Total Liabilities and Shareholders' Equity	\$ 9,186	\$ 5,096	\$ 7,276	\$ (10,708)	\$ 10,850

TYSON FOODS, INC.

Condensed Consolidating Balance Sheet as of September 29, 2007

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Assets					
Current Assets:					
Cash and cash equivalents	\$ 3	\$ -	\$ 39	\$ -	\$ 42
Accounts receivable, net	1	557	1,461	(773)	1,246
Inventories	-	674	1,485	-	2,159
Other current assets	79	32	18	(59)	70
Assets of discontinued operation held for sale	-	-	164	-	164
Total Current Assets	83	1,263	3,167	(832)	3,681
Net Property, Plant and Equipment	44	1,015	2,549	-	3,608
Goodwill	-	1,499	986	-	2,485
Intangible Assets	-	57	69	-	126
Other Assets	137	113	139	(62)	327
Investment in subsidiaries	8,243	976	-	(9,219)	-
Total Assets	\$ 8,507	\$ 4,923	\$ 6,910	\$ (10,113)	\$ 10,227
Liabilities and Shareholders' Equity					
Current Liabilities:					
Current debt	\$ 120	\$ -	\$ 17	\$ -	\$ 137
Trade accounts payable	79	517	454	-	1,050
Other current liabilities	1,008	143	609	(832)	928
Total Current Liabilities	1,207	660	1,080	(832)	2,115
Long-Term Debt	2,355	255	32	-	2,642
Deferred Income Taxes	-	168	261	(62)	367
Other Liabilities	214	94	64	-	372
Shareholders' Equity	4,731	3,746	5,473	(9,219)	4,731
Total Liabilities and Shareholders' Equity	\$ 8,507	\$ 4,923	\$ 6,910	\$ (10,113)	\$ 10,227

TYSON FOODS, INC.

Condensed Consolidating Statement of Cash Flows for the year ended September 27, 2008

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Cash Provided by (Used for) Operating Activities	\$ (236)	\$ 271	\$ 268	\$ (15)	\$ 288
Cash Flows From Investing Activities:					
Additions to property, plant and equipment	6	(104)	(327)	-	(425)
Proceeds from sale of investments	14	7	1	-	22
Purchases of marketable securities, net	(1)	-	(2)	-	(3)
Other, net	5	4	(2)	-	7
Cash Provided by (Used for) Investing Activities	24	(93)	(330)	-	(399)
Cash Flows From Financing Activities:					
Net change in debt	145	(5)	(51)	-	89
Net proceeds from Class A stock offering	274	-	-	-	274
Convertible note hedge transactions	(94)	-	-	-	(94)
Warrant transactions	44	-	-	-	44
Purchase of treasury shares	(30)	-	-	-	(30)
Dividends	(56)	-	(15)	15	(56)
Other, net	72	2	20	-	94
Net change in intercompany balances	(6)	(175)	181	-	-
Cash Provided by (Used for) Financing Activities	349	(178)	135	15	321
Effect of Exchange Rate Change on Cash	-	-	(2)	-	(2)
Increase in Cash and Cash Equivalents	137	-	71	-	208
Cash and Cash Equivalents at Beginning of Year	3	-	39	-	42
Cash and Cash Equivalents at End of Year	\$ 140	\$ -	\$ 110	\$ -	\$ 250

Condensed Consolidating Statement of Cash Flows for the year ended September 29, 2007

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Cash Provided by (Used for) Operating Activities	\$ (22)	\$ 278	\$ 447	\$ (25)	\$ 678
Cash Flows From Investing Activities:					
Additions to property, plant and equipment	(14)	(40)	(231)	-	(285)
Proceeds from sale of short-term investment	770	-	-	-	770
Proceeds from sale of marketable securities, net	-	-	16	-	16
Other, net	81	29	(32)	-	78
Cash Provided by (Used for) Investing Activities	837	(11)	(247)	-	579
Cash Flows From Financing Activities:					
Net change in debt	(747)	(4)	(459)	-	(1,210)
Purchase of treasury shares	(61)	-	-	-	(61)
Dividends	(56)	-	(25)	25	(56)
Other, net	80	(7)	2	-	75
Net change in intercompany balances	(30)	(257)	287	-	-
Cash Used for Financing Activities	(814)	(268)	(195)	25	(1,252)
Effect of Exchange Rate Change on Cash	-	-	9	-	9
Increase (Decrease) in Cash and Cash Equivalents	1	(1)	14	-	14
Cash and Cash Equivalents at Beginning of Year	2	1	25	-	28
Cash and Cash Equivalents at End of Year	\$ 3	\$ -	\$ 39	\$ -	\$ 42

TYSON FOODS, INC.

Condensed Consolidating Statement of Cash Flows for the year ended September 30, 2006

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Cash Provided by Operating Activities	\$ 18	\$ 76	\$ 338	\$ (60)	\$ 372
Cash Flows From Investing Activities:					
Additions to property, plant and equipment	(81)	(153)	(297)	-	(531)
Purchase of short-term investment	(750)	-	-	-	(750)
Proceeds from sale of marketable securities, net	-	-	23	-	23
Other, net	29	(15)	20	-	34
Cash Used for Investing Activities	(802)	(168)	(254)	-	(1,224)
Cash Flows From Financing Activities:					
Net change in debt	1,087	(101)	(2)	-	984
Purchase of treasury shares	(42)	-	-	-	(42)
Dividends	(55)	-	(60)	60	(55)
Other, net	(57)	(2)	16	-	(43)
Net change in intercompany balances	(153)	195	(42)	-	-
Cash Provided by (Used for) Financing Activities	780	92	(88)	60	844
Effect of Exchange Rate Change on Cash	-	-	(4)	-	(4)
Decrease in Cash and Cash Equivalents	(4)	-	(8)	-	(12)
Cash and Cash Equivalents at Beginning of Year	6	1	33	-	40
Cash and Cash Equivalents at End of Year	\$ 2	\$ 1	\$ 25	\$ -	\$ 28

TYSON FOODS, INC.**NOTE 11: COMPREHENSIVE INCOME (LOSS)**

The components of accumulated other comprehensive income are as follows:

	in millions	
	2008	2007
Accumulated other comprehensive income:		
Currency translation adjustment	\$ 60	\$ 62
Unrealized net hedging losses, net of taxes	(8)	(6)
Unrealized net loss on investments, net of taxes	(1)	-
Postretirement benefits reserves adjustments (1)	(10)	(6)
Total accumulated other comprehensive income	\$ 41	\$ 50

(1) Fiscal 2007 includes adjustment of \$3 million, net of tax, related to the initial adoption of SFAS No. 158. Refer to Note 13, "Pensions and Other Postretirement Benefits."

The components of other comprehensive income (loss) are as follows:

	in millions		
	Before Tax	Income Tax	After Tax
Fiscal 2008:			
Currency translation adjustment	\$ (2)	\$ -	\$ (2)
Net change in postretirement liabilities	(10)	6	(4)
Investments unrealized loss	(1)	-	(1)
Net hedging gain	6	(2)	4
Net hedging gain reclassified to income statement	(10)	4	(6)
Other comprehensive loss – 2008	\$ (17)	\$ 8	\$ (9)
Fiscal 2007:			
Currency translation adjustment	\$ 24	\$ -	\$ 24
Pension unrealized gain, prior to adoption of SFAS No. 158	9	(3)	6
Net hedging gain	33	(13)	20
Net hedging gain reclassified to income statement	(33)	13	(20)
Other comprehensive income – 2007	\$ 33	\$ (3)	\$ 30
Fiscal 2006:			
Currency translation adjustment	\$ (6)	\$ -	\$ (6)
Pension unrealized loss, prior to adoption of SFAS No. 158	(16)	6	(10)
Investments unrealized gain	1	-	1
Net hedging gain	1	-	1
Net hedging loss reclassified to income statement	6	(3)	3
Other comprehensive loss – 2006	\$ (14)	\$ 3	\$ (11)

NOTE 12: STOCK-BASED COMPENSATION

We issue shares under our stock-based compensation plans by issuing Class A stock from treasury. The total number of shares available for future grant under the Tyson Foods, Inc. 2000 Stock Incentive Plan (Incentive Plan) was 24,823,940 at September 27, 2008.

Stock Options

Shareholders approved the Incentive Plan in January 2001. The Incentive Plan is administered by the Compensation Committee of the Board of Directors (Compensation Committee). The Incentive Plan includes provisions for granting incentive stock options for shares of Class A stock at a price not less than the fair market value at the date of grant. Nonqualified stock options may be granted at a price equal to, less than or more than the fair market value of Class A stock on the date the option is granted. Stock options under the Incentive Plan generally become exercisable ratably over two to five years from the date of grant and must be exercised within 10 years from the date of grant. Our policy is to recognize compensation expense on a straight-line basis over the requisite service period for the entire award.

TYSON FOODS, INC.

	Shares Under Option	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (in Years)	Aggregate Intrinsic Value (in millions)
Outstanding, September 29, 2007	15,482,915	\$ 14.20		
Exercised	(699,470)	11.98		
Canceled	(1,157,895)	15.33		
Granted	3,280,464	15.06		
Outstanding, September 27, 2008	16,906,014	14.38	6.6	\$243
Exercisable, September 27, 2008	7,464,489	\$ 12.94	4.8	\$97

The weighted-average grant-date fair value of options granted during fiscal years 2008, 2007 and 2006, respectively, was \$5.22, \$5.85 and \$6.86. The fair value of each option grant is established on the date of grant using a binomial lattice method for grants awarded after October 1, 2005, and the Black-Scholes option-pricing model for grants awarded before October 1, 2005. The change to the binomial lattice method was made to better reflect the exercise behavior of top management. We use historical volatility for a period of time comparable to the expected life of the option to determine volatility assumptions. Expected life is calculated based on the contractual term of each grant and takes into account the historical exercise and termination behavior of participants. Risk-free interest rates are based on the five-year Treasury bond rate. Weighted average assumptions used in the fair value calculation are outlined in the following table.

	2008	2007	2006
Weighted average expected life	5.5 years	5.6 years	5.9 years
Weighted average risk-free interest rate	4.08%	3.88%	3.70%
Range of risk-free interest rates	3.1-4.6%	2.6-4.6%	2.6-4.8%
Weighted average expected volatility	34.61%	36.85%	37.83%
Range of expected volatility	30.9-40.1%	33.7-40.1%	35.2-40.1%
Expected dividend yield	1.02%	1.11%	1.23%

We recognized stock-based compensation expense related to stock options, net of income taxes, of \$12 million, \$11 million and \$9 million, respectively, during fiscal years 2008, 2007 and 2006, with a \$7 million, \$6 million and \$5 million related tax benefit. We had 2.5 million, 1.9 million and 3.3 million options vest in fiscal years 2008, 2007 and 2006, respectively, with a fair value of \$15 million, \$9 million and \$16 million, respectively.

In fiscal years 2008, 2007 and 2006, we received cash of \$9 million, \$59 million and \$28 million, respectively, for the exercise of stock options. Shares are issued from treasury for stock option exercises. The related tax benefit realized from stock options exercised during fiscal years 2008, 2007 and 2006, was \$1 million, \$12 million and \$4 million. The total intrinsic value of options exercised in fiscal years 2008, 2007 and 2006, was \$3 million, \$31 million and \$10 million, respectively. SFAS No. 123R requires the cash flows resulting from tax deductions in excess of the compensation cost of those options (excess tax deductions) to be classified as financing cash flows. We realized \$0, \$9 million and \$4 million, respectively, in excess tax deductions during fiscal years 2008, 2007 and 2006. As of September 27, 2008, we had \$40 million of total unrecognized compensation cost related to stock option plans that will be recognized over a weighted average period of 2.7 years.

TYSON FOODS, INC.

Restricted Stock

We issue restricted stock at the market value as of the date of grant, with restrictions expiring over periods through July 1, 2020. Unearned compensation is recognized over the vesting period for the particular grant using a straight-line method.

	Number of Shares	Weighted Average Grant-Date Fair Value Per Share	Weighted Average Remaining Contractual Life (in Years)	Aggregate Intrinsic Value (in millions)
Nonvested, September 29, 2007	6,061,334	\$ 14.95		
Granted	975,727	15.28		
Dividends	54,206	14.49		
Vested	(2,031,907)	12.28		
Forfeited	(293,636)	15.54		
Nonvested, September 27, 2008	4,765,724	16.16	2.4	\$60

As of September 27, 2008, we had \$37 million of total unrecognized compensation cost related to restricted stock awards that will be recognized over a weighted average period of 2.4 years.

We recognized stock-based compensation expense related to restricted stock, net of income taxes, of \$11 million, \$14 million and \$15 million for years 2008, 2007 and 2006, respectively. The related tax benefit for fiscal years 2008, 2007 and 2006 was \$6 million, \$9 million and \$9 million, respectively. We had 2.0 million, 3.4 million and 0.4 million, respectively, restricted stock awards vest in fiscal years 2008, 2007 and 2006, with a grant date fair value of \$24 million, \$37 million and \$5 million.

Performance-based Shares

In July 2003, our Compensation Committee authorized us to award performance-based shares of our Class A stock to certain senior executive officers on the first business day of each of the Company's 2004, 2005 and 2006 fiscal years. The Compensation Committee later authorized the expansion of the awards to include additional senior officers and to extend out to fiscal year 2008. The vesting of the performance-based shares for the 2006 award is over two and one-half to three years and the vesting for the 2007 and 2008 awards is over three years (the Vesting Period), each award being subject to the attainment of goals determined by the Compensation Committee prior to the date of the award. We review progress toward the attainment of goals each quarter during the Vesting Period. However, the attainment of goals can be determined only at the end of the Vesting Period. If the shares vest, the ultimate cost will be equal to the Class A stock price on the date the shares vest times the number of shares awarded for all performance grants with other than market criteria. For grants with market performance criteria, the ultimate cost will be the fair value of the probable shares to vest regardless if the shares actually vest. Total expense recorded related to performance-based shares was not material for fiscal years 2008, 2007 and 2006.

NOTE 13: PENSIONS AND OTHER POSTRETIREMENT BENEFITS

Effective September 29, 2007, we adopted SFAS No. 158, which requires the recognition in pension obligations and accumulated other comprehensive income of actuarial gains or losses, prior service costs or credits and transition assets or obligations previously deferred under the reporting requirements of SFAS No. 87, SFAS No. 106 and SFAS No. 132(R). The following table reflects the effects of adoption of SFAS No. 158 on the Consolidated Balance Sheet as of September 29, 2007.

	in millions		
	Before Application of SFAS No. 158	Adjustments	After Application of SFAS No. 158
Other assets	\$ 332	\$ (5)	\$ 327
Total assets	10,232	(5)	10,227
Deferred income taxes	366	1	367
Other liabilities	381	(9)	372
Accumulated other comprehensive income	47	3	50
Total shareholders' equity	4,728	3	4,731
Total liabilities and shareholders' equity	10,232	(5)	10,227

At September 27, 2008, we had four noncontributory defined benefit pension plans consisting of three funded qualified plans and one unfunded non-qualified plan. All three of our qualified plans are frozen and provide benefits based on a formula using years of service and a specified benefit rate. Effective January 1, 2004, we implemented a non-qualified defined benefit plan for certain

TYSON FOODS, INC.

contracted officers that uses a formula based on years of service and final average salary. We also have other postretirement benefit plans for which substantially all of our employees may receive benefits if they satisfy applicable eligibility criteria. The postretirement healthcare plans are contributory with participants' contributions adjusted when deemed necessary.

We have defined contribution retirement and incentive benefit programs for various groups of employees. We recognized expenses of \$48 million, \$46 million and \$55 million in fiscal 2008, 2007 and 2006, respectively.

We use a fiscal year end measurement date for our defined benefit plans and other postretirement plans. We generally recognize the effect of actuarial gains and losses into earnings immediately for other postretirement plans rather than amortizing the effect over future periods.

Other postretirement benefits include postretirement medical costs and life insurance.

Benefit obligations and funded status

The following table provides a reconciliation of the changes in the plans' benefit obligations, assets and funded status at September 27, 2008, and September 29, 2007:

	in millions					
	Pension Benefits				Other Postretirement	
	Qualified		Non-Qualified		Benefits	
	2008	2007	2008	2007	2008	2007
Change in benefit obligation						
Benefit obligation at beginning of year	\$ 98	\$ 99	\$ 30	\$ 25	\$ 49	\$ 61
Service cost	-	-	3	6	1	1
Interest cost	6	5	2	2	3	4
Plan participants' contributions	-	-	-	-	2	8
Amendments	-	-	-	-	-	(4)
Actuarial (gain) loss	(6)	-	(2)	(2)	1	12
Benefits paid	(8)	(6)	(1)	(1)	(9)	(16)
Settlement	-	-	-	-	-	(17)
Benefit obligation at end of year	90	98	32	30	47	49
Change in plan assets						
Fair value of plan assets at beginning of year	97	85	-	-	-	-
Actual return on plan assets	(11)	14	-	-	-	-
Employer contributions	1	4	1	1	7	8
Plan participants' contributions	-	-	-	-	1	8
Benefits paid	(8)	(6)	(1)	(1)	(8)	(16)
Fair value of plan assets at end of year	79	97	-	-	-	-
Funded status	\$ (11)	\$ (1)	\$ (32)	\$ (30)	\$ (47)	\$ (49)

Amounts recognized in the Consolidated Balance Sheets consist of:

	in millions					
	Pension Benefits				Other Postretirement	
	Qualified		Non-Qualified		Benefits	
	2008	2007	2008	2007	2008	2007
Other assets	\$ -	\$ 7	\$ -	\$ -	\$ -	\$ -
Accrued benefit liability	(11)	(8)	(32)	(30)	(47)	(49)
Accumulated other comprehensive (income)/loss:						
Unrecognized actuarial loss	24	13	-	1	-	-
Unrecognized prior service (cost)/credit	-	-	4	5	(9)	(10)
Net amount recognized	\$ 13	\$ 12	\$ (28)	\$ (24)	\$ (56)	\$ (59)

The increase (decrease) in the pretax minimum liability related to our pension plans included in other comprehensive income (loss) was \$9 million, \$(9) million and \$16 million in fiscal 2008, 2007 and 2006, respectively.

At September 27, 2008, all pension plans had an accumulated benefit obligation in excess of plan assets. At September 29, 2007, three pension plans had an accumulated benefit obligation in excess of plan assets. The accumulated benefit obligation for all qualified pension plans was \$90 million and \$98 million at September 27, 2008, and September 29, 2007, respectively. Plans with accumulated

TYSON FOODS, INC.

benefit obligations in excess of plan assets are as follows:

	in millions			
	Pension Benefits			
	Qualified		Non-Qualified	
	2008	2007	2008	2007
Projected benefit obligation	\$ 90	\$ 26	\$ 32	\$ 30
Accumulated benefit obligation	90	26	31	30
Fair value of plan assets	79	18	-	-

Net Periodic Benefit Cost

Components of net periodic benefit cost for pension and postretirement benefit plans recognized in the Consolidated Statements of Operations are as follows:

	Pension Benefits						Other Postretirement Benefits		
	Qualified		Non-Qualified			Benefits			
	2008	2007	2006	2008	2007	2006	2008	2007	2006
Service cost	\$ -	\$ -	\$ -	\$ 3	\$ 6	\$ 6	\$ 1	\$ 1	\$ 1
Interest cost	6	5	5	2	2	1	3	4	4
Expected return on plan assets	(7)	(7)	(6)	-	-	-	-	-	-
Amortization of prior service cost	-	-	-	1	1	1	(1)	(2)	(2)
Recognized actuarial loss, net	1	1	-	-	-	-	1	12	14
Curtailment and settlement gain	-	-	-	-	-	-	-	(27)	(2)
Net periodic benefit cost	\$ -	\$ (1)	\$ (1)	\$ 6	\$ 9	\$ 8	\$ 4	\$ (12)	\$ 15

Assumptions

Weighted average assumptions are as follows:

	Pension Benefits						Other Postretirement Benefits		
	Qualified		Non-Qualified			Benefits			
	2008	2007	2006	2008	2007	2006	2008	2007	2006
Discount rate to determine net periodic benefit cost	6.33%	5.93%	5.80%	6.25%	6.00%	6.00%	6.25%	6.00%	6.00%
Discount rate to determine benefit obligations	5.88%	5.39%	5.75%	6.50%	6.25%	6.00%	6.50%	6.25%	6.10%
Rate of compensation increase	N/A	N/A	N/A	3.50%	3.50%	4.00%	N/A	N/A	N/A
Expected return on plan assets	8.02%	7.89%	8.03%	N/A	N/A	N/A	N/A	N/A	N/A

To determine the rate-of-return on assets assumption, we first examined historical rates of return for the various asset classes. We then determined a long-term projected rate-of-return based on expected returns over the next five to 10 years.

We have three postretirement health plans. Two of these consist of fixed, annual payments and account for \$33 million of the postretirement medical obligation at September 27, 2008. A healthcare cost trend is not required to determine this obligation. The remaining plan accounts for \$14 million of the postretirement medical obligation at September 27, 2008. The plan covers retirees who do not yet qualify for Medicare and uses a healthcare cost trend of 10% in the current year, grading down to 6% in fiscal 2012. The decision was made in the fourth quarter of fiscal 2007 to outsource a Post-age 65 plan to a third party insurer. This decision effectively settled the plan in fiscal 2007. We recognized a gain of approximately \$27 million related to this plan change. A one-percentage point change in assumed healthcare cost trend rate would have an immaterial impact on the postretirement benefit obligation and total service and interest cost.

Plan Assets

The fair value of plan assets for domestic pension benefit plans was \$64 million and \$80 million as of September 27, 2008, and September 29, 2007, respectively. The following table sets forth the actual and target asset allocation for pension plan assets:

TYSON FOODS, INC.

	2008	2007	Target Asset Allocation
Cash	0.9%	2.2%	0.0%
Fixed income securities	31.1	24.4	30.0
US Stock Funds-Large- and Mid-Cap	24.1	48.8	25.0
US Stock Funds-Small-Cap	20.0	9.7	20.0
International Stock Funds	18.8	14.9	20.0
Real Estate	5.1	0.0	5.0
Total	100.0%	100.0%	100.0%

A foreign subsidiary pension plan had \$15 million and \$17 million in plan assets at September 27, 2008, and September 29, 2007, respectively. All of this plan's assets are held in annuity contracts consistent with its target asset allocation.

The Plan Trustees have established a set of investment objectives related to the assets of the pension plans and regularly monitor the performance of the funds and portfolio managers. Objectives for the pension assets are (1) to provide growth of capital and income, (2) to achieve a target weighted average annual rate of return competitive with other funds with similar investment objectives and (3) to diversify to reduce risk. The investment objectives and target asset allocation were adopted in January 2004 and amended in January 2008.

Contributions

Our policy is to fund at least the minimum contribution required to meet applicable federal employee benefit and local tax laws. In our sole discretion, we may from time to time fund additional amounts. Expected contributions to pension plans for fiscal 2009 are approximately \$2 million. For fiscal 2008, 2007 and 2006, we funded \$2 million, \$5 million and \$0, respectively, to defined benefit plans.

Estimated Future Benefit Payments

The following benefit payments are expected to be paid:

	in millions		
	Pension Benefits		Other Postretirement Benefits
	Qualified	Non-Qualified	
2009	\$ 6	\$ 1	\$ 6
2010	7	2	6
2011	6	2	6
2012	7	2	5
2013	12	2	5
2014-2018	33	16	22

The above benefit payments for other postretirement benefit plans are not expected to be offset by Medicare Part D subsidies in 2009 or thereafter.

NOTE 14: SUPPLEMENTAL CASH FLOW INFORMATION

The following table summarizes cash payments for interest and income taxes:

	in millions		
	2008	2007	2006
Interest	\$ 211	\$ 262	\$ 159
Income taxes, net of refunds	51	97	144

TYSON FOODS, INC.**NOTE 15: TRANSACTIONS WITH RELATED PARTIES**

We have operating leases for farms, equipment and other facilities with Don Tyson, a director of the Company, John Tyson, Chairman of the Company, certain members of their families and the Randal W. Tyson Testamentary Trust. Total payments of \$3 million in fiscal 2008, \$5 million in fiscal 2007, and \$8 million in fiscal 2006, were paid to entities in which these parties had an ownership interest.

In 2008, a lawsuit captioned In re Tyson Foods, Inc. Consolidated Shareholder's Litigation was settled. Pursuant to the settlement, Don Tyson and the Tyson Limited Partnership paid us \$4.5 million.

NOTE 16: INCOME TAXES

Detail of the provision (benefit) for income taxes from continuing operations consists of:

	in millions		
	2008	2007	2006
Federal	\$ 56	\$ 129	\$ (79)
State	8	16	(12)
Foreign	4	(3)	(3)
	<u>\$ 68</u>	<u>\$ 142</u>	<u>\$ (94)</u>
Current	\$ 33	\$ 137	\$ 32
Deferred	35	5	(126)
	<u>\$ 68</u>	<u>\$ 142</u>	<u>\$ (94)</u>

The reasons for the difference between the statutory federal income tax rate and the effective income tax rate from continuing operations are as follows:

	2008	2007	2006
Federal income tax rate	35.0%	35.0%	35.0%
State income taxes, excluding FIN 48	2.0	2.3	3.3
Extraterritorial income exclusion	-	(1.1)	-
Unrecognized tax benefits, net	4.4	(4.6)	-
Medicare Part D	(0.8)	3.2	(1.8)
Adjustment for tax review	-	-	(5.1)
General business credits	(3.8)	(2.6)	2.6
Domestic production deduction	(2.2)	(1.0)	-
Fixed asset tax cost correction	-	4.2	-
Officers life insurance	3.8	(1.4)	0.8
Change in state valuation allowance	5.0	-	-
Other	1.2	0.6	0.2
	<u>44.6%</u>	<u>34.6%</u>	<u>35.0%</u>

An increase in the state valuation allowance increased the fiscal 2008 tax expense by \$8 million, while non-deductible activity relating to company-owned life insurance increased the fiscal 2008 tax expense by \$6 million. The addition of FIN 48 unrecognized tax benefits in fiscal 2008 caused a net increase to income tax expense of approximately \$7 million. Additionally, estimated general business credits decreased fiscal 2008 tax expense by \$6 million.

During fiscal 2007, we discovered a certain population of our tax cost and accumulated depreciation values were not accurately recorded, primarily related to a property, plant and equipment system conversion in 1999. This system conversion did not impact the recorded book value of the property, plant and equipment. As a result, the net tax basis of property, plant and equipment was overstated, which caused the deferred tax liability in our financial statements to be understated. In fiscal 2007, we increased our deferred tax liabilities \$17 million and recognized additional tax expense of \$17 million.

The fiscal 2007 effective tax rate was reduced by 4.6% due to the reduction of income tax reserves management deemed were no longer required. The net reduction to current income tax expense of approximately \$20 million related to Internal Revenue Service examinations, appeals and United States Tax Court settlement activity, as well as state income tax examination settlements. Additional related adjustments resulted in a \$28 million reduction of goodwill.

During fiscal 2006, we completed a review of our tax account balances, and as a result, reduced our income tax benefit by \$15 million. This included \$12 million related to additional tax reserves for our foreign operations and \$3 million related to a cumulative adjustment to our recorded tax balances attributable to book to tax differences associated with property, plant and equipment

TYSON FOODS, INC.

(including synthetic leases) and certain acquired deferred tax liabilities. Additional adjustments resulted in an increase to goodwill of \$12 million, deferred tax liabilities of \$3 million and a reduction of property, plant and equipment of \$9 million.

Deferred income taxes are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The tax effects of major items recorded as deferred tax assets and liabilities are:

	in millions			
	2008		2007	
	Deferred Tax Assets	Liabilities	Deferred Tax Assets	Liabilities
Property, plant and equipment	\$ -	\$ 365	\$ -	\$ 399
Suspended taxes from conversion to accrual method	-	96	-	104
Intangible assets	-	30	7	32
Inventory	13	89	13	74
Accrued expenses	167	-	165	-
Net operating loss and other carryforwards	124	-	133	-
Note hedge transactions	36	-	-	-
Insurance reserves	22	-	22	-
Prepays	-	23	-	40
Other	58	48	53	71
	\$ 420	\$ 651	\$ 393	\$ 720
Valuation allowance	\$ (49)	-	\$ (55)	-
Net deferred tax liability	\$ -	\$ 280	\$ -	\$ 382

Net deferred tax liabilities are included in Other Current Assets, Other Current Liabilities and Deferred Income Taxes on the Consolidated Balance Sheets.

The deferred tax liability for suspended taxes from conversion to accrual method represents the 1987 change from the cash to accrual method of accounting and will be recognized by 2027.

We have accumulated undistributed earnings of foreign subsidiaries aggregating approximately \$219 million and \$215 million at September 27, 2008 and September 29, 2007, respectively. These earnings are expected to be indefinitely reinvested outside of the United States. If those earnings were distributed in the form of dividends or otherwise, we would be subject to federal income taxes (subject to an adjustment for foreign tax credits), state income taxes and withholding taxes payable to the various foreign countries. It is not currently practicable to estimate the tax liability that might be payable on the repatriation of these foreign earnings.

The tax effected valuation allowance of \$49 million consists of \$30 million for state tax credit and net operating loss carryforwards, \$3 million for federal net operating loss carryforwards and \$16 million for international net operating loss carryforwards. The state tax credit and net operating loss carryforwards expire in fiscal years 2009 through 2027. At September 27, 2008, after considering utilization restrictions, our gross federal tax net operating loss carryforwards approximated \$165 million. Gross federal net operating loss carryforwards of \$8 million are subject to utilization limitations due to ownership changes and may be utilized to offset future taxable income subject to limitations. These carryforwards expire during fiscal years 2009 through 2024. The \$49 million valuation allowance described above includes \$3 million that if subsequently recognized, will be allocated to reduce goodwill, which was recorded at the time of acquisition of TFM.

The following table summarizes the activity related to our gross unrecognized tax benefits from the beginning of fiscal 2008 to September 27, 2008.

	in millions	
	Unrecognized Tax Benefits	
	\$	
Balance as of the beginning of fiscal 2008	\$ 210	
Increases related to current year tax positions	23	
Increases related to prior year tax positions	36	
Reductions related to prior year tax positions	(28)	
Reductions related to settlements	(14)	
Reductions related to expirations of statute of limitations	(7)	
Balance as of September 27, 2008	\$ 220	

TYSON FOODS, INC.

We classify interest and penalties on unrecognized tax benefits as income tax expense. At September 27, 2008, and at the adoption of FIN 48 at the beginning of fiscal 2008, before tax benefits, we had \$67 million and \$70 million, respectively, of accrued interest and penalties on unrecognized tax benefits.

As of September 27, 2008, we are subject to income tax examinations for U.S. federal income taxes for fiscal years 1998 through 2007, and for foreign, state and local income taxes for fiscal years 2001 through 2007. During fiscal 2009, tax audit resolutions could potentially reduce unrecognized tax benefits by approximately \$26 million, either because tax positions are sustained on audit or because we agree to their disallowance.

NOTE 17: EARNINGS (LOSS) PER SHARE

The earnings and weighted average common shares used in the computation of basic and diluted earnings (loss) per share are as follows:

	in millions, except per share data		
	2008	2007	2006
Numerator:			
Income (loss) from continuing operations	\$ 86	\$ 268	\$ (174)
Less Dividends:			
Class A (\$0.16/share)	46	45	41
Class B (\$0.144/share)	10	11	14
Undistributed earnings (losses)	30	212	(229)
Class A undistributed earnings (losses)	25	170	(170)
Class B undistributed earnings (losses)	5	42	(59)
Total undistributed earnings (losses)	\$ 30	\$ 212	\$ (229)
Denominator:			
Denominator for basic earnings per share:			
Class A weighted average shares	281	273	249
Class B weighted average shares, and shares under if-converted method for diluted earnings per share	70	75	96
Effect of dilutive securities:			
Stock options and restricted stock	5	7	-
Denominator for diluted earnings per share - adjusted weighted average shares and assumed conversions	356	355	345

Earnings (Loss) Per Share from Continuing Operations:

Class A Basic	\$ 0.25	\$ 0.79	\$ (0.51)
Class B Basic	\$ 0.22	\$ 0.70	\$ (0.47)
Diluted	\$ 0.24	\$ 0.75	\$ (0.51)

Net income (loss):

Class A Basic	\$ 0.25	\$ 0.79	\$ (0.58)
Class B Basic	\$ 0.22	\$ 0.70	\$ (0.53)
Diluted	\$ 0.24	\$ 0.75	\$ (0.58)

Approximately 10 million, 4 million and 28 million, respectively, in fiscal years 2008, 2007 and 2006, of our option shares were antidilutive and were not included in the dilutive earnings per share calculation.

We have two classes of capital stock, Class A stock and Class B stock. Cash dividends cannot be paid to holders of Class B stock unless they are simultaneously paid to holders of Class A stock. The per share amount of cash dividends paid to holders of Class B stock cannot exceed 90% of the cash dividend paid to holders of Class A stock.

We allocate undistributed earnings (losses) based upon a 1 to 0.9 ratio per share of Class A stock and Class B stock, respectively. We allocate undistributed earnings (losses) based on this ratio due to historical dividend patterns, voting control of Class B shareholders and contractual limitations of dividends to Class B stock.

TYSON FOODS, INC.

NOTE 18: SEGMENT REPORTING

We operate in four segments: Chicken, Beef, Pork and Prepared Foods. We measure segment profit as operating income (loss).

Chicken: Chicken operations include breeding and raising chickens, as well as processing live chickens into fresh, frozen and value-added chicken products and logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. It also includes sales from allied products and our chicken breeding stock subsidiary.

Beef: Beef operations include processing live fed cattle and fabricating dressed beef carcasses into primal and sub-primal meat cuts and case-ready products. This segment also includes sales from allied products such as hides and variety meats, as well as logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. Allied products are marketed to manufacturers of pharmaceuticals and technical products.

Pork: Pork operations include processing live market hogs and fabricating pork carcasses into primal and sub-primal cuts and case-ready products. This segment also includes our live swine group, related allied product processing activities and logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. We sell allied products to pharmaceutical and technical products manufacturers, as well as a limited number of live swine to pork processors.

Prepared Foods: Prepared Foods operations include manufacturing and marketing frozen and refrigerated food products and logistics operations to move products through the supply chain. Products include pepperoni, bacon, beef and pork pizza toppings, pizza crusts, flour and corn tortilla products, appetizers, prepared meals, ethnic foods, soups, sauces, side dishes, meat dishes and processed meats. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world.

TYSON FOODS, INC.

in millions

	Chicken	Beef	Pork	Prepared Foods	Other	Consolidated
Fiscal year ended September 27, 2008						
Sales	\$8,900	\$11,664	\$3,587	\$2,711	\$-	\$26,862
Operating income (loss)	(118)	106	280	63	-	331
Other expense						177
Income from continuing operations before income taxes						154
Depreciation (a)	244	117	31	67	-	459
Total assets (b)	4,990	3,169	898	971	663	10,691
Additions to property, plant and equipment (c)	258	83	21	46	15	423
Fiscal year ended September 29, 2007						
Sales	\$8,210	\$11,540	\$3,314	\$2,665	\$-	\$25,729
Operating income	325	51	145	92	-	613
Other expense						203
Income from continuing operations before income taxes						410
Depreciation (a)	260	120	31	61	-	472
Total assets (b)	4,467	3,207	814	961	614	10,063
Additions to property, plant and equipment (c)	164	33	10	25	47	279
Fiscal year ended September 30, 2006						
Sales	\$7,958	\$10,866	\$3,067	\$2,698	\$-	\$24,589
Operating income (loss)	94	(254)	55	55	-	(50)
Other expense						218
Loss from continuing operations before income taxes						(268)
Depreciation (a)	262	117	30	63	-	472
Total assets (b)	4,395	3,139	847	1,021	1,561	10,963
Additions to property, plant and equipment (c)	225	134	14	55	100	528

a) Excludes depreciation related to discontinued operation of \$9 million, \$10 million and \$9 million for fiscal years 2008, 2007 and 2006, respectively.

b) Excludes assets held for sale related to discontinued operation of \$159 million, \$164 million and \$158 million for fiscal years 2008, 2007 and 2006, respectively.

c) Excludes additions to property, plant and equipment related to discontinued operation of \$2 million, \$6 million and \$3 million for fiscal years 2008, 2007 and 2006, respectively.

In the fourth quarter fiscal 2008, we began to manage and report the operating results and identifiable assets of our logistics operations in the segment in which the product being moved relates. As a result, our operating segments now reflect logistics operations which were previously included in Other. All prior periods have been restated to reflect this change.

We allocate expenses related to corporate activities to the segments, while the related assets and additions to property, plant and equipment remain in Other.

The Pork segment had sales of \$517 million, \$515 million and \$467 million for fiscal years 2008, 2007 and 2006, respectively, from transactions with other operating segments. The Beef segment had sales of \$142 million, \$111 million and \$104 million for fiscal years 2008, 2007 and 2006, respectively, from transactions with other operating segments. These sales from intersegment transactions, which are sold at market prices, were excluded from the segment sales in the above table.

Our largest customer, Wal-Mart Stores, Inc., accounted for 13.3%, 13.4% and 13.0% of consolidated sales in fiscal years 2008, 2007 and 2006, respectively. Sales to Wal-Mart Stores, Inc. were included in the Chicken, Beef, Pork and Prepared Foods segments. Any extended discontinuance of sales to this customer could, if not replaced, have a material impact on our operations.

The majority of our operations are domiciled in the United States. Approximately 98% of sales to external customers for each of fiscal years 2008, 2007 and 2006 were sourced from the United States. Approximately \$3.4 billion, \$3.5 billion and \$3.7 billion, respectively, of property, plant and equipment were located in the United States at September 27, 2008, September 29, 2007, and September 30, 2006. Approximately \$139 million, \$125 million and \$116 million of property, plant and equipment were located in foreign countries, primarily Mexico, at fiscal years ended 2008, 2007 and 2006, respectively.

We sell certain products in foreign markets, primarily Canada, Central America, China, the European Union, Japan, Mexico, the Middle East, Russia, South Korea, and Taiwan. Our export sales totaled \$3.2 billion, \$2.5 billion and \$2.0 billion for fiscal 2008, 2007 and 2006, respectively. Substantially all of our export sales are facilitated through unaffiliated brokers, marketing associations and foreign sales staffs. Foreign sales, which are sales of products produced in a country other than the United States, were less than 10%

TYSON FOODS, INC.

of consolidated sales for each of fiscal years 2008, 2007 and 2006. Approximately 22% and 10% of income from continuing operations before income taxes for fiscal 2008 and 2007, respectively, was from foreign operations. In fiscal 2006, we had income from continuing operations before income taxes related to foreign operations of \$13 million.

NOTE 19: QUARTERLY FINANCIAL DATA (UNAUDITED)

	in millions, except per share data			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2008				
Sales	\$ 6,476	\$ 6,336	\$ 6,849	\$ 7,201
Gross profit	315	315	259	357
Operating income	94	54	45	138
Income (loss) from continuing operations	41	3	(3)	45
Income (loss) from discontinued operation	(7)	(8)	12	3
Net income (loss)	34	(5)	9	48
Earnings (loss) from continuing operations:				
Class A Basic	\$ 0.12	\$ 0.01	\$ (0.01)	\$ 0.13
Class B Basic	\$ 0.11	\$ 0.01	\$ (0.01)	\$ 0.11
Diluted	\$ 0.12	\$ 0.01	\$ (0.01)	\$ 0.12
Earnings (loss) from discontinued operation:				
Class A Basic	\$ (0.02)	\$ (0.03)	\$ 0.04	\$ 0.01
Class B Basic	\$ (0.02)	\$ (0.02)	\$ 0.03	\$ 0.01
Diluted	\$ (0.02)	\$ (0.03)	\$ 0.04	\$ 0.01
Net income (loss):				
Class A Basic	\$ 0.10	\$ (0.02)	\$ 0.03	\$ 0.14
Class B Basic	\$ 0.09	\$ (0.01)	\$ 0.02	\$ 0.12
Diluted	\$ 0.10	\$ (0.02)	\$ 0.03	\$ 0.13
2007				
Sales	\$ 6,298	\$ 6,239	\$ 6,618	\$ 6,574
Gross profit	342	353	428	306
Operating income	151	148	212	102
Income from continuing operations	60	61	114	33
Income (loss) from discontinued operation	(3)	7	(3)	(1)
Net income	57	68	111	32
Earnings from continuing operations:				
Class A Basic	\$ 0.18	\$ 0.18	\$ 0.33	\$ 0.10
Class B Basic	\$ 0.16	\$ 0.16	\$ 0.30	\$ 0.08
Diluted	\$ 0.17	\$ 0.17	\$ 0.32	\$ 0.09
Earnings (loss) from discontinued operation:				
Class A Basic	\$ (0.01)	\$ 0.02	\$ (0.01)	\$ -
Class B Basic	\$ (0.01)	\$ 0.02	\$ (0.01)	\$ -
Diluted	\$ (0.01)	\$ 0.02	\$ (0.01)	\$ -
Net income:				
Class A Basic	\$ 0.17	\$ 0.20	\$ 0.32	\$ 0.10
Class B Basic	\$ 0.15	\$ 0.18	\$ 0.29	\$ 0.08
Diluted	\$ 0.16	\$ 0.19	\$ 0.31	\$ 0.09

TYSON FOODS, INC.

In June 2008, we executed a letter of intent to sell the beef processing, cattle feed yard and fertilizer assets of Lakeside Farm Industries Ltd. We are reporting Lakeside as a discontinued operation and have restated the quarterly financial data accordingly.

First quarter fiscal 2008 income from continuing operations before income taxes includes an \$18 million non-operating gain related to sale of an investment and a \$6 million severance charge related to the FAST initiative. Second quarter fiscal 2008 income from continuing operations before income taxes includes \$47 million in charges related to restructuring a beef plant operation, closing a poultry plant, impairment of packaging equipment and software impairments. Third quarter fiscal 2008 loss from continuing operations before income taxes includes \$13 million in charges related to flood damage and impairment of unimproved real property. Fourth quarter fiscal 2008 income from continuing operations before income taxes includes a \$10 million charge related to intangible asset impairments.

Fourth quarter fiscal 2007 income from continuing operations includes tax expense of \$17 million related to a fixed asset tax cost correction.

NOTE 20: CAPITAL STRUCTURE

In September 2008, we issued 22.4 million shares of Class A stock as part of a public offering. The shares were offered at \$12.75. Net proceeds, after underwriting discounts and commissions, of approximately \$274 million were used toward the repayment of our borrowings under the accounts receivable securitization facility and for other general corporate purposes. An entity controlled by Don Tyson purchased three million shares of Class A stock in this offering.

During fiscal 2007, Tyson Limited Partnership converted 15.9 million shares of Class B stock to Class A stock on a one-for-one basis.

During fiscal 2006, Tyson Limited Partnership converted 15 million shares of Class B stock to Class A stock on a one-for-one basis. Additionally, Don Tyson, a director, converted 750,000 shares of Class B stock to Class A stock on a one-for-one basis.

NOTE 21: CONTINGENCIES

Listed below are certain claims made against the Company and our subsidiaries. In our opinion, we have made appropriate and adequate reserves, accruals and disclosures where necessary, and believe the probability of a material loss beyond the amounts accrued to be remote; however, the ultimate liability for these matters is uncertain, and if accruals and reserves are not adequate, an adverse outcome could have a material effect on the consolidated financial condition or results of operations. We believe we have substantial defenses to the claims made and intend to vigorously defend these cases.

In 2000, the Wage and Hour Division of the U.S. Department of Labor (DOL) conducted an industry-wide investigation of poultry producers, including us, to ascertain compliance with various wage and hour issues. As part of this investigation, the DOL inspected 14 of our processing facilities. On May 9, 2002, the DOL filed a civil complaint styled Elaine L. Chao, Secretary of Labor, United States Department of Labor v. Tyson Foods, Inc. against us in the U.S. District Court for the Northern District of Alabama. The plaintiffs allege in the complaint that we violated the overtime provisions of the federal Fair Labor Standards Act at our chicken-processing facility in Blountsville, Alabama. The complaint does not contain a definite statement of what acts constituted alleged violations of the statute, although the Secretary of Labor indicated in discovery the case seeks to require us to compensate all hourly chicken processing workers for pre- and post-shift clothes changing, washing and related activities and for one of two unpaid 30-minute meal periods. The Secretary of Labor seeks unspecified back wages for all employees at the Blountsville facility for a period of two years prior to the date of the filing of the complaint, and an additional amount in unspecified liquidated damages and an injunction against future violations at that facility and all other chicken processing facilities we operate. The District Court granted the Company's motion for partial summary judgment in part, ruling that the second meal period is appropriately characterized as non-compensable, and reserving the remaining issues for trial. The trial is presently set for January 5, 2009.

Several private lawsuits are pending against us alleging that we failed to compensate poultry plant employees for all hours worked, including overtime compensation, in violation of the Fair Labor Standards Act. These lawsuits include M.H. Fox, et al. v. Tyson Foods, Inc. (Fox), filed on June 22, 1999, in the U.S. District Court for the Northern District of Alabama, and DeAsencio v. Tyson Foods, Inc. (DeAsencio), filed on August 22, 2000, in the U.S. District Court for the Eastern District of Pennsylvania. Each of these matters involves similar allegations that employees should be paid for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing, obtaining clothing and walking to and from the changing area, work areas and break areas. The plaintiffs in these lawsuits seek or have sought to act as class representatives on behalf of all current and former employees who were allegedly not paid for time worked and seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees. In Fox, the District Court denied class certification on November 16, 2006, and ordered the cases of the 10 named plaintiffs in the matter to proceed individually in the home jurisdictions of the named plaintiffs. Two of these cases (Brothers and Hatchett) were tried in November 2007 in Alabama with jury verdicts in favor of the plaintiffs. The District Court recently entered judgment in the final of these cases (Fox) after the Company made an offer of judgment to Fox, thereby avoiding trial. However, the District Court must now determine the amount of attorneys' fees and costs to be awarded to the plaintiffs. In DeAsencio, plaintiffs appealed a jury verdict and final judgment entered in our favor on June 22, 2006, in the District Court. On September 7, 2007, the U.S.

TYSON FOODS, INC.

Court of Appeals for the Third Circuit reversed the jury verdict and remanded the case to the District Court for further proceedings. We sought rehearing en banc, which was denied by the Court of Appeals on October 5, 2007. The United States Supreme Court denied our petition for a writ of certiorari on June 9, 2008.

In addition to Fox and DeAsencio, additional private lawsuits were filed against us since the beginning of fiscal 2007 which allege we failed to compensate poultry plant employees for all hours worked, including overtime compensation, in violation of the Fair Labor Standards Act. These lawsuits are Sheila Ackles, et al. v. Tyson Foods, Inc. (N. Dist. Alabama, October 23, 2006); McCluster, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, December 11, 2006); Dobbins, et al. v. Tyson Chicken, Inc., et al. (N. Dist. Alabama, December 21, 2006); Buchanan, et al. v. Tyson Chicken, Inc., et al. and Potter, et al. v. Tyson Chicken, Inc., et al. (N. Dist. Alabama, December 22, 2006); Jones, et al. v. Tyson Foods, Inc., et al., Walton, et al. v. Tyson Foods, Inc., et al. and Williams, et al. v. Tyson Foods, Inc., et al. (S. Dist. Mississippi, February 9, 2007); Balch, et al. v. Tyson Foods, Inc. (E. Dist. Oklahoma, March 1, 2007); Adams, et al. v. Tyson Foods, Inc. (W. Dist. Arkansas, March 2, 2007); Atkins, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, March 5, 2007); and Laney, et al. v. Tyson Foods, Inc. and Williams, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, May 23, 2007). Similar to Fox and DeAsencio, each of these matters involves allegations employees should be paid for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing, obtaining clothing and walking to and from the changing area, work areas and break areas. The plaintiffs in each of these lawsuits seek or have sought to act as class representatives on behalf of all current and former employees who were allegedly not paid for time worked and seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees. On April 6, 2007, we filed a motion for transfer of the above named actions for coordinated pretrial proceedings before the Judicial Panel on Multidistrict Litigation. The motion for transfer was granted on August 17, 2007. The cases listed above and five other cases subsequently filed involving the same allegations, including Armstrong, et al. v. Tyson Foods, Inc. (W. Dist. Tennessee, January 30, 2008); Maldonado, et al. v. Tyson Foods, Inc. (E. Dist. Tennessee, January 31, 2008); White, et al. v. Tyson Foods, Inc. (E. Dist. Texas, February 1, 2008); Meyer, et al. v. Tyson Foods, Inc. (W. Dist. Missouri, February 2, 2008); and Leak, et al. v. Tyson Foods, Inc. (W. Dist. North Carolina, February 6, 2008), were transferred to the U.S. District Court in the Middle District of Georgia, In re: Tyson Foods, Inc., Fair Labor Standards Act Litigation ("MDL Proceedings"). On January 2, 2008, the Judge in the MDL Proceedings issued a Joint Scheduling and Case Management Order. The Order granted Conditional Class Certification and called for notice to be given to potential putative class members via a third party administrator. The potential class members had until April 18, 2008, to "opt-in" to the class. Approximately 13,800 employees and former employees filed their consents to "opt-in" to the class. As of April 18, 2008, the parties began conducting discovery for a period of 240 days at eight of our facilities and our corporate headquarters in Springdale, Arkansas. Discovery may be conducted at additional facilities in the future. On October 15, 2008, the Judge in the MDL Proceedings denied the plaintiffs' motion for equitable tolling, which reduces the time period for which the plaintiffs may seek damages.

On June 19, 2005, the Attorney General and the Secretary of the Environment of the State of Oklahoma filed a complaint in the U.S. District Court for the Northern District of Oklahoma against us, three of our subsidiaries and six other poultry integrators. This complaint was subsequently amended. As amended, the complaint asserts a number of state and federal causes of action including, but not limited to, counts under Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), Resource Conservation and Recovery Act ("RCRA"), and state-law public nuisance theories. The amended complaint asserts that defendants and certain contract growers who are not named in the complaint polluted the surface waters, groundwater and associated drinking water supplies of the Illinois River Watershed ("IRW") through the land application of poultry litter. Oklahoma asserts that this alleged pollution has also caused extensive injury to the environment (including soils and sediments) of the IRW and that the defendants have been unjustly enriched. Oklahoma's claims cover the entire IRW, which encompasses more than one million acres of land and the natural resources (including lakes and waterways) contained therein. Oklahoma seeks wide-ranging relief, including injunctive relief, compensatory and punitive damages, attorneys fees and disgorgement. We and the other defendants have denied liability, asserted various defenses, and filed a third-party complaint that asserts claims against other persons and entities whose activities may have contributed to the pollution alleged in the amended complaint. The district court has stayed proceedings on the third party complaint pending resolution of Oklahoma's claims against the defendants. On November 14, 2007, Oklahoma filed a motion under RCRA requesting a preliminary injunction to halt the land application of poultry litter in the IRW. Oklahoma's motion for a preliminary injunction asserted that bacteria from poultry litter are causing an imminent and substantial endangerment to human health and the environment throughout the IRW. A multi-week evidentiary hearing on the preliminary injunction was completed on March 6, 2008. On September 29, 2008, the court entered an order denying the preliminary injunction. On October 17, 2008, Oklahoma filed a notice of appeal of the district court's denial of the preliminary injunction in the United States Court of Appeals for the Tenth Circuit. Discovery in Oklahoma's case against defendants is ongoing. Trial is currently scheduled for September 2009.

We currently have pending eleven separate wage and hour actions involving TFM's plants located in Lexington, Nebraska (Lopez, et al. v. Tyson Foods, Inc., District of Nebraska, June 30, 2006), Garden City and Emporia, Kansas (Garcia, et al. v. Tyson Foods, Inc., Tyson Fresh Meats, Inc., District of Kansas, May 15, 2006), Storm Lake, Iowa (Sharp, et al. v. Tyson Foods, Inc., (N.D. Iowa, February 6, 2007), Columbus Junction, Iowa (Robinson, et al. v. Tyson Foods, Inc., d/b/a Tyson Fresh Meats, Inc., S.D. Iowa, September 12, 2007), Joslin, Illinois (Murray, et al. v. Tyson Foods, Inc., C.D. Illinois, January 2, 2008), Dakota City, Nebraska (Gomez, et al. v. Tyson Foods, Inc., District of Nebraska, January 16, 2008), Madison, Nebraska (Acosta, et al. v. Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., District of Nebraska, February 29, 2008), Perry and Waterloo, Iowa (Edwards, et al. v. Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., S.D. Iowa, March 20, 2008); Council Bluffs, Iowa (Salazar, et al. v. Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., S.D. Iowa, April 29, 2008; and Logansport, Indiana (Carter, et al. v. Tyson Foods, Inc. and Tyson Fresh Meats, Inc.,

TYSON FOODS, INC.

N.D. Indiana, April 29, 2008); and Goodlettsville, Tennessee (Cunningham v. Tyson Fresh Meats, Inc., M.D. Tennessee, May 22, 2008). With the exception of Cunningham, the actions allege TFM failed to pay employees for all hours worked, including overtime compensation for the time it takes to change into protective work uniforms, safety equipment and other sanitary and protective clothing worn by employees, and for walking to and from the changing area, work areas and break areas in violation of the Fair Labor Standards Act and analogous state laws. The plaintiffs seek back wages, liquidated damages, pre- and post-judgment interest, attorneys' fees and costs. Cunningham alleges TFM failed to pay quality assurance technicians overtime compensation for all hours worked in excess of forty hours in each work week. TFM filed a motion for partial summary judgment in Garcia, based upon an injunction entered in Reich v. IBP, which outlined the types of activities at issue here that are compensable. The District Court of Kansas denied the motion, and TFM appealed to the Tenth Circuit Court of Appeals, arguing that the District Court's ruling had the effect of improperly modifying the injunction. On July 23, 2008, Tyson filed a motion to transfer the eleven actions to the District of Kansas for consolidated pretrial proceedings. On October 9, 2008, the motion to transfer was denied by the Judicial Panel on Multidistrict Litigation. The effect of this order will be that the stays previously entered in the individual actions will be lifted and each case will resume.

On November 21, 2002, 10 current and former hourly employees of a TFM case ready facility in Goodlettsville, Tennessee, filed a putative class action lawsuit styled Emily D. Jordan, et al. v. IBP, inc. and Tyson Foods, Inc. in the U.S. District Court for the Middle District of Tennessee against us claiming violations of the overtime provisions of the Fair Labor Standards Act by failing to pay employees for all hours worked. The suit further alleges employees should be paid for the time it takes to collect, assemble and put on, take off and wash their health, safety and production gear at the beginning and end of their shifts and during their meal period. Finally, the suit alleges we deduct 30 minutes per day from employees' paychecks regardless of whether employees use a full 30-minute period for their meal. The plaintiffs seek a declaration that the defendants did not comply with the Fair Labor Standards Act, and an award for an unspecified amount of back pay compensation and benefits, unpaid entitlements, liquidated damages, prejudgment and post-judgment interest, attorney fees and costs. On November 17, 2003, the District Court conditionally certified a collective action based on clothes changing and washing activities and unpaid production work during meal periods, since the plant operations began in April 2001. Approximately 650 current and former employees have opted into the class. On August 20, 2007, both parties filed motions for summary judgment. The court granted in part and denied in part the parties' motions for partial summary judgment on March 13, 2008. A jury trial was set to begin on September 16, 2008, but the parties resolved the litigation. On September 25, 2008, the court entered an agreed order of dismissal with prejudice and approved the confidential settlement agreement of the parties.

NOTE 22: SUBSEQUENT EVENTS

In October 2008, Dynamic Fuels received \$100 million in Gulf Opportunity Zone tax-exempt bonds made available by the Federal government to the regions affected by Hurricanes Katrina and Rita in 2005. These floating rate bonds are due October 1, 2033, and have an initial interest rate of 1.3%. We issued a letter of credit as a guarantee for the entire bond issuance. In exchange for our guarantee, Syntroleum Corporation, the other 50 percent investor in Dynamic Fuels, issued to us eight million Syntroleum stock warrants with an exercise price of \$0.01 per share.

In October 2008, we completed the acquisition of three vertically integrated poultry companies in southern Brazil. The purchase price was \$80 million, as well as up to an additional \$15 million of contingent purchase price based on production volumes payable through fiscal 2010. These transactions include the acquisitions of Macedo Agroindustrial, Avicola Itaiopolis and Frangobras. Combined, we expect these companies will have sales of \$150-\$175 million in fiscal 2009.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders
of Tyson Foods, Inc.

We have audited the accompanying consolidated balance sheets of Tyson Foods, Inc. as of September 27, 2008 and September 29, 2007, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three years in the period ended September 27, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Tyson Foods, Inc. at September 27, 2008 and September 29, 2007, and the consolidated results of its operations and its cash flows for each of the three years in the period ended September 27, 2008, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As described in Note 2 to the consolidated financial statements, the Company adopted Statement of Financial Accounting Standards Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" in 2008.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Tyson Foods, Inc.'s internal control over financial reporting as of September 27, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated November 17, 2008, expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Rogers, Arkansas
November 17, 2008

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders
of Tyson Foods, Inc.

We have audited Tyson Foods, Inc.'s internal control over financial reporting as of September 27, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Tyson Foods, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Report of Management under the caption "Management's Report on Internal Control over Financial Reporting". Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Tyson Foods, Inc. maintained, in all material respects, effective internal control over financial reporting as of September 27, 2008, based on the COSO criteria .

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Tyson Foods, Inc. as of September 27, 2008 and September 29, 2007, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three years in the period ended September 27, 2008, and our report dated November 17, 2008, expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Rogers, Arkansas
November 17, 2008

TYSON FOODS, INC.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

An evaluation was performed, under the supervision and with the participation of management, including the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO), of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the 1934 Act)). Based on that evaluation, management, including the CEO and CFO, has concluded that, as of September 27, 2008, our disclosure controls and procedures were effective to ensure that information required to be disclosed in reports we file or submit under the 1934 Act has been recorded, processed, summarized and reported in accordance with the rules and forms of the Securities and Exchange Commission.

Changes in Internal Control Over Financial Reporting

In the quarter ended September 27, 2008, there have been no changes in the Company's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) of the Securities Exchange Act of 1934. Our internal control system was designed to provide reasonable assurance to management and the board of directors regarding the preparation and fair presentation of published financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Management conducted an evaluation of the effectiveness of our internal control over financial reporting as of September 27, 2008. In making this assessment, we used criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework.

Based on this evaluation under the framework in Internal Control – Integrated Framework issued by COSO, Management concluded that the Company's internal control over financial reporting was effective as of September 27, 2008.

The Company's independent registered public accounting firm, Ernst & Young LLP, has audited the financial statements included in this Form 10-K and has issued an attestation report on the Company's internal control over financial reporting. The attestation report on the Company's internal control over financial reporting appears in Part II, Item 8.

ITEM 9B. OTHER INFORMATION

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

See information set forth under the captions “Election of Directors” and “Section 16(a) Beneficial Ownership Reporting Compliance” in the registrant’s definitive Proxy Statement for the registrant’s Annual Meeting of Shareholders to be held February 6, 2009 (the “Proxy Statement”), which information is incorporated herein by reference. Pursuant to general instruction G(3) of the instructions to Annual Report on Form 10-K, certain information concerning our executive officers is included under the caption “Executive Officers of the Company” in Part I of this Report.

We have a code of ethics as defined in Item 406 of Regulation S-K, which code applies to all of our directors and employees, including our principal executive officers, principal financial officer, principal accounting officer or controller, and persons performing similar functions. This code of ethics, titled “Tyson Foods, Inc. Code of Conduct,” is available, free of charge on our website at <http://ir.tyson.com>.

ITEM 11. EXECUTIVE COMPENSATION

See the information set forth under the captions “Executive Compensation,” “Director Compensation” and “Compensation Committee Interlocks and Insider Participation” in the Proxy Statement, which information is incorporated herein by reference. However, pursuant to Instructions to Item 407(e)(5) of the Securities and Exchange Commission Regulation S-K, the material appearing under the sub-heading “Compensation Committee Report” shall not be deemed to be “filed” with the Commission, other than as provided in this Item 11.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

See the information included under the captions “Security Ownership of Certain Beneficial Owners” and “Security Ownership of Management” in the Proxy Statement, which information is incorporated herein by reference.

Securities Authorized for Issuance Under Equity Compensation Plans

The following information reflects certain information about our equity compensation plans as of September 27, 2008:

Equity Compensation Plan Information			
	(a)	(b)	(c)
	Number of Securities to be issued upon exercise of outstanding options	Weighted average exercise price of outstanding options	Number of Securities remaining available for future issuance under equity compensation plans (excluding Securities reflected in column (a))
Equity compensation plans approved by security holders	16,646,346	\$14.47	46,033,141
Equity compensation plans not approved by security holders	-	-	-
Total	16,646,346	\$14.47	46,033,141

This table does not include 259,668 options, with a weighted-average exercise price of \$8.27, which were assumed in connection with the acquisition of IBP, inc. in 2001.

- a) Outstanding options granted by the Company
- b) Weighted average price of outstanding options
- c) Shares available for future issuance as of September 27, 2008, under the Stock Incentive Plan (24,823,940), the Employee Stock Purchase Plan (12,826,299) and the Retirement Savings Plan (8,382,902)

TYSON FOODS, INC.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

See the information included under the captions "Election of Directors" and "Certain Transactions" in the Proxy Statement, which information is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

See the information included under the captions "Audit Fees," "Audit-Related Fees," "Tax Fees" and "All Other Fees" in the Proxy Statement, which information is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as a part of this report:

Consolidated Statements of Operation

for the three years ended September 27, 2008

Consolidated Balance Sheets at

September 27, 2008, and September 29, 2007

Consolidated Statements of Shareholders' Equity

for the three years ended September 27, 2008

Consolidated Statements of Cash Flows

for the three years ended September 27, 2008

Notes to Consolidated Financial Statements

Reports of Independent Registered Public Accounting Firm

Financial Statement Schedule - Schedule II Valuation and Qualifying

Accounts for the three years ended September 27, 2008

All other schedules are omitted because they are neither applicable nor required.

The exhibits filed with this report are listed in the Exhibit Index at the end of Item 15.

TYSON FOODS, INC.

EXHIBIT INDEX

Exhibit No.

- 2.1 Agreement and Plan of Merger dated as of January 1, 2001, among the Company, IBP, inc. and Lasso Acquisition Corporation (previously filed as Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the period ended December 30, 2000, Commission File No. 001-14704, and incorporated herein by reference).
- 3.1 Restated Certificate of Incorporation of the Company (previously filed as Exhibit 3.1 to the Company's Annual Report on Form 10-K for the fiscal year ended October 3, 1998, Commission File No. 001-14704, and incorporated herein by reference).
- 3.2 Fourth Amended and Restated By-laws of the Company (previously filed as Exhibit 3.2 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 4.1 Indenture between the Company and The Chase Manhattan Bank, N.A., as Trustee (the "Company Indenture") (previously filed as Exhibit 4 to Registration Statement on Form S-3, filed with the Commission on December 18, 1997, Registration No. 333-42525, and incorporated herein by reference).
- 4.2 Form of 7.0% Note due May 1, 2018 issued under the Company Indenture (previously filed as Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 28, 1998, Commission File No. 001-14704, and incorporated herein by reference).
- 4.3 Supplemental Indenture between the Company and The Chase Manhattan Bank, N.A., as Trustee, dated as of October 2, 2001, supplementing the Company Indenture, together with form of 8.250% Note (previously filed as Exhibit 4.14 to the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2001, Commission File No. 001-14704, and incorporated herein by reference).
- 4.4 Form of 6.60% Senior Notes due April 1, 2016 issued under the Company Indenture (previously filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed March 22, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 4.5 Supplemental Indenture among the Company, Tyson Fresh Meats, Inc. and JPMorgan Chase Bank, National Association, dated as of September 18, 2006, supplementing the Company Indenture (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 19, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 4.6 Indenture, dated January 26, 1996, between IBP, inc. (IBP) and The Bank of New York (the IBP Indenture) (previously filed as Exhibit 4 to IBP's Registration Statement on Form S-3, filed with the Commission on November 20, 1995, Commission File No. 33-64459, and incorporated herein by reference).
- 4.7 Form of Senior Note issued under the IBP Indenture for the issuance of (a) 7.125% Senior Notes due February 1, 2026, and (b) 7.95% Senior Notes due February 1, 2010 (previously filed as Exhibit 4.16 to the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2001, Commission File No. 001-14704, and incorporated herein by reference).
- 4.8 First Supplemental Indenture, dated as of September 28, 2001, among the Company, Lasso Acquisition Corporation and The Bank of New York (previously filed as Exhibit 4.18 to the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2001, Commission File No. 001-14704, and incorporated herein by reference).
- 4.9 Supplemental Indenture dated as of September 15, 2008, between the Company and The Bank of New York Mellon Trust Company, National Association (as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank, N.A.)), as Trustee (including the form of Notes) (previously filed as Exhibit 4.2 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).

TYSON FOODS, INC.

- 10.1 Amended and Restated Receivable Transfer Agreement, dated as of August 6, 2008, by and among Tyson Receivables Corporation, a Delaware corporation, Tyson Foods, Inc., a Delaware corporation, the several commercial paper conduits identified therein as CP Conduit Purchasers and the several financial institutions identified therein as Committed Purchasers, and their respective Funding Agents, JPMorgan Chase Bank, a New York state banking corporation, as administrative agent for the benefit of the CP Conduit Purchasers, the Committed Purchasers and the Funding Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 11, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.2 Receivables Purchase Agreement, executed in connection with the Receivables Transfer Agreement described in Exhibit 10.1 above, among the Company and certain subsidiaries of the Company, as Sellers and Tyson Receivables Corporation, as Purchaser (previously filed as Exhibit 10.7 to the Company's Annual Report on Form 10-K for the period ended September 28, 2002, Commission File No. 001-14704, and incorporated herein by reference).
- 10.3 Amendment No. 1 to Receivables Purchase Agreement, dated August 13, 2004, among the Company and certain subsidiaries of the Company, as Sellers and Tyson Receivables Corporation, as Purchaser (previously filed as Exhibit 10.46 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.4 Amendment No. 2 to Receivables Purchase Agreement, dated as of August 6, 2008, by and among Tyson Receivables Corporation, a Delaware corporation, Tyson Foods, Inc., a Delaware corporation, certain subsidiaries of Tyson, the several commercial paper conduits identified therein as CP Conduit Purchasers and the several financial institutions identified therein as Committed Purchasers, and their respective Funding Agents, JPMorgan Chase Bank, a New York state banking corporation, as administrative agent for the benefit of the CP Conduit Purchasers, the Committed Purchasers and the Funding Agents (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed August 11, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.5 Five-Year Revolving Credit Agreement, dated as of September 28, 2005, by and among the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents, J.P. Morgan Securities Inc., as Lead Arranger and Sole Bookrunner, and certain other lenders party thereto (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed October 3, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.6 Amendment No. 1, dated as of March 2, 2006, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed March 7, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 10.7 Amendment No. 2, dated as of April 28, 2006, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed May 2, 2006, Commission File No. 001-14704, and incorporated herein by reference).

TYSON FOODS, INC.

- 10.8 Amendment No. 3, dated as of July 27, 2006, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, as amended, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 31, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 10.9 Amendment No. 4, dated as of March 7, 2008, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, as amended, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 29, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.10 Amendment No. 5, dated as of September 10, 2008, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, as amended, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 12, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.11 Convertible note hedge transaction confirmation, dated as of September 9, 2008, by and between JPMorgan Chase Bank, National Association and the Company (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.12 Warrant transaction confirmation, dated as of September 9, 2008, by and between JPMorgan Chase Bank, National Association and the Company (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.13 Letter Agreement, dated as of September 9, 2008, by and between JPMorgan Chase Bank, National Association and the Company (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.14 Convertible note hedge transaction confirmation, dated as of September 9, 2008, by and between Merrill Lynch Financial Markets, Inc. and the Company (previously filed as Exhibit 10.4 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.15 Warrant transaction confirmation, dated as of September 9, 2008, by and between Merrill Lynch Financial Markets, Inc. and the Company (previously filed as Exhibit 10.5 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.16 Letter Agreement, dated as September 9, 2008, by and between Merrill Lynch Financial Markets, Inc. and the Company (previously filed as Exhibit 10.6 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.17 Second Amended and Restated Employment Agreement, dated as of December 19, 2006, by and between Richard L. Bond and the Company (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 22, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 10.18 Nonqualified Stock Option Award pursuant to the Tyson Foods, Inc. 2000 Stock Incentive Plan, dated November 17, 2006, between the Company and Richard L. Bond (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 22, 2006, Commission File No. 001-14704, and incorporated herein by reference).

TYSON FOODS, INC.

- 10.19 Restricted Stock Unit Agreement, dated as of September 28, 2007, between the Company and Richard L. Bond (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.20 Senior Executive Employment Agreement dated November 20, 1998 between the Company and Leland E. Tollett (previously filed as Exhibit 10.20 to the Company's Annual Report on Form 10K for the fiscal year ended October 3, 1998, Commission File No. 001-14704, and incorporated herein by reference).
- 10.21 Amendment to Senior Executive Employment Agreement dated February 4, 2005, by and between the Company and Leland E. Tollett (previously filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the period ended January 1, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.22 Executive Employment Agreement between the Company and J. Alberto Gonzalez Pita, dated November 15, 2004 (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 18, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.23 Separation Agreement and General Release between the Company and J. Alberto Gonzalez-Pita, dated April 29, 2008 (previously filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the period ended March 29, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.24 Officer Employment Agreement between the Company and Craig J. Hart, dated November 12, 2004 (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed November 18, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.25 Senior Advisor Agreement, dated July 30, 2004, by and between Don Tyson and the Company (previously filed as Exhibit 10.43 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.26 Officer Employment Agreement between the Company and James V. Lochner, dated October 7, 2005 (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed October 12, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.27 Executive Employment Agreement between the Company and Wade Miquelon, dated April 13, 2006 (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 18, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 10.28 Voluntary Separation Agreement and General Release, dated as of May 12, 2008, between the Company and Wade Miquelon (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 13, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.29 Executive Employment Agreement between the Company and Donnie D. King, dated March 6, 2007 (previously filed as Exhibit 10.36 to the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.30 Executive Employment Agreement between the Company and Bernard Leonard, dated November 16, 2006 (previously filed as Exhibit 10.37 to the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.31 Executive Employment Agreement between the Company and Donald J. Smith, dated May 24, 2007 (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended December 29, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.32 Executive Employment Agreement between the Company and David L. Van Bebber, dated May 21, 2008 (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended June 28, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.33 Executive Employment Agreement between the Company and Dennis Leatherby, dated June 6, 2008 (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 11, 2008, Commission File No. 001-14704, and incorporated herein by reference).

TYSON FOODS, INC.

- 10.34 Executive Employment Agreement between the Company and Richard A. Greubel, Jr, dated May 3, 2007 (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 31, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.35 Agreement, dated as of September 28, 2007, between the Company and John Tyson (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.36 Indemnity Agreement, dated as of September 28, 2007, between the Company and John Tyson (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.37 Form of Indemnity Agreement between Tyson Foods, Inc. and its directors and certain executive officers (previously filed as Exhibit 10(t) to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1995, Commission File No. 0-3400, and incorporated herein by reference).
- 10.38 Form of IBP's Indemnification Agreement with officers and directors (previously filed as Exhibit 10.8 to IBP's Registration Statement on Form S-1, dated August 19, 1987, File No. 1-6085 and incorporated hereby by reference).
- 10.39 Tyson Foods, Inc. Annual Incentive Compensation Plan for Senior Executives adopted February 4, 2005 (previously filed as Exhibit 10.34 to the Company's Annual Report on Form 10-K for the fiscal year ended October 1, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.40 Tyson Foods, Inc. Restricted Stock Bonus Plan, effective August 21, 1989, as amended and restated on April 15, 1994; and Amendment to Restricted Stock Bonus Plan effective November 18, 1994 (previously filed as Exhibit 10(l) to the Company's Annual Report on Form 10-K for the fiscal year ended October 1, 1994, Commission File No. 0-3400, and incorporated herein by reference).
- 10.41 Amended and Restated Tyson Foods, Inc. Employee Stock Purchase Plan, dated as of October 1, 2008.
- 10.42 Restated Executive Savings Plan of Tyson Foods, Inc. effective January 1, 2009.
- 10.43 Amended and Restated Tyson Foods, Inc. 2000 Stock Incentive Plan dated November 19, 2004, First Amendment to the Amended and Restated Tyson Foods, Inc. 2000 Stock Incentive Plan dated February 2, 2007, and Second Amendment to the Amended and Restated Tyson Foods, Inc. 2000 Stock Incentive Plan dated August 13, 2007.
- 10.44 IBP Directors Stock Option Plan (previously filed as Exhibit 10.5.4 to IBP's Annual Report on Form 10-K for the fiscal year ended December 25, 1993, File No. 1-6085 and incorporated herein by reference).
- 10.45 IBP 1996 Stock Option Plan (previously filed as Exhibit 10.5.7 to IBP's Annual Report on Form 10-K for the fiscal year ended December 28, 1996, File No. 1-6085 and incorporated herein by reference).
- 10.46 Amended and Restated Retirement Income Plan of IBP, inc. dated August 1, 2000, and Amendment to Freeze the Retirement Income Plan of IBP, inc. dated December 31, 2002.
- 10.47 Amended and Restated Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan dated March 1, 2007, First Amendment to the Amended and Restated Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan dated September 24, 2007, and Second Amendment to the Amended and Restated Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan dated February 29, 2008.

TYSON FOODS, INC.

- 10.48 Retirement Savings Plan of Tyson Foods, Inc. dated November 3, 2008.
- 10.49 Form of Restricted Stock Agreement pursuant to which restricted stock awards are granted under the Tyson Foods, Inc. 2000 Stock Incentive Plan (previously filed as Exhibit 10.48 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.50 Form of Stock Option Grant Agreement pursuant to which stock option awards are granted under the Tyson Foods, Inc. 2000 Stock Incentive Plan (previously filed as Exhibit 10.49 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.51 Form of Tyson Foods, Inc. Performance Stock Award Grant Document pursuant to which performance stock awards are granted under the Tyson Foods, Inc. 2000 Stock Incentive Plan (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed October 4, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 12.1 Calculation of Ratio of Earnings to Fixed Charges
- 14.1 Code of Conduct of the Company (previously filed as Exhibit 14.1 to the Company's Current Report on Form 8-K filed January 18, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 21 Subsidiaries of the Company
- 23 Consent of Ernst & Young, LLP
- 31.1 Certification of Chief Executive Officer pursuant to SEC Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to SEC Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

TYSON FOODS, INC.

SIGNATURES

Pursuant to requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TYSON FOODS, INC.

By: /s/ Dennis Leatherby
Dennis Leatherby
Executive Vice President and Chief
Financial Officer

November 20, 2008

TYSON FOODS, INC.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated.

<u>/s/ Richard L. Bond</u> Richard L. Bond	President and Chief Executive Officer	November 20, 2008
<u>/s/ Lloyd V. Hackley</u> Lloyd V. Hackley	Director	November 20, 2008
<u>/s/ Craig J. Hart</u> Craig J. Hart	Senior Vice President, Controller and Chief Accounting Officer	November 20, 2008
<u>/s/ Jim Keever</u> Jim Keever	Director	November 20, 2008
<u>/s/ Kevin M. McNamara</u> Kevin M. McNamara	Director	November 20, 2008
<u>/s/ Dennis Leatherby</u> Dennis Leatherby	Executive Vice President and Chief Financial Officer	November 20, 2008
<u>/s/ Brad T. Sauer</u> Brad T. Sauer	Director	November 20, 2008
<u>/s/ Jo Ann R. Smith</u> Jo Ann R. Smith	Director	November 20, 2008
<u>/s/ Barbara A. Tyson</u> Barbara A. Tyson	Director	November 20, 2008
<u>/s/ Don Tyson</u> Don Tyson	Director	November 20, 2008
<u>/s/ John Tyson</u> John Tyson	Chairman of the Board of Directors	November 20, 2008
<u>/s/ Albert C. Zapanta</u> Albert C. Zapanta	Director	November 20, 2008

**FINANCIAL STATEMENT SCHEDULE
TYSON FOODS, INC.
SCHEDULE II
VALUATION AND QUALIFYING ACCOUNTS**

Three Years Ended September 27, 2008

	in millions				
	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts	Additions (Deductions)	Balance at End of Period
Allowance for Doubtful Accounts					
2008	\$ 8	\$ 5	\$ -	\$ (1)	\$ 12
2007	8	1	-	(1)	8
2006	9	(5) ⁽¹⁾	-	4 ⁽²⁾	8

(1) We reduced a portion of the allowance for doubtful accounts as the respective accounts receivable balances were either collected or determined to be collectible.

(2) We received payments on accounts that had previously been written off.

**TYSON FOODS, INC.
EMPLOYEE STOCK PURCHASE PLAN**

(As Amended and Restated as of October 1, 2008)

**TYSON FOODS, INC.
EMPLOYEE STOCK PURCHASE PLAN**

TABLE OF CONTENTS

<u>PURPOSE OF THE PLAN</u>	<u>1</u>
<u>ARTICLE I Definitions</u>	<u>1</u>
<u>1.1 Affiliate</u>	<u>1</u>
<u>1.2 Base Earnings</u>	<u>1</u>
<u>1.3 Committee</u>	<u>1</u>
<u>1.4 Effective Date</u>	<u>1</u>
<u>1.5 Eligible Employee</u>	<u>1</u>
<u>1.6 Employer</u>	<u>1</u>
<u>1.7 Leave of Absence</u>	<u>1</u>
<u>1.8 Pay Period, Payday</u>	<u>2</u>
<u>1.9 Participant</u>	<u>2</u>
<u>1.10 Participating Affiliate</u>	<u>2</u>
<u>1.11 Payroll Deduction Agreement</u>	<u>2</u>
<u>1.12 Plan Administrator</u>	<u>2</u>
<u>1.13 Prevailing Market Price</u>	<u>2</u>
<u>1.14 Service</u>	<u>3</u>
<u>1.15 Stock</u>	<u>3</u>
<u>1.16 Termination of Service</u>	<u>3</u>
<u>ARTICLE II Eligibility to Participate</u>	<u>3</u>
<u>ARTICLE III Employee Participation and Contributions</u>	<u>3</u>
<u>3.1 Voluntary, Non-Discriminatory Plan</u>	<u>3</u>
<u>3.2 How an Employee-Elects to Participate</u>	<u>3</u>
<u>3.3 Limits on Contribution</u>	<u>3</u>
<u>3.4 Voluntary Withdrawal from the Plan</u>	<u>4</u>
<u>3.5 Termination of Service Means Withdrawal from Plan</u>	<u>4</u>
<u>3.6 Effect of Participant's Withdrawal from Plan</u>	<u>4</u>
<u>3.7 Bookkeeping Accounts</u>	<u>4</u>
<u>3.8 Distributions from Plan Upon Termination of Service</u>	<u>4</u>
<u>3.9 Repurchases</u>	<u>5</u>
<u>ARTICLE IV Employer Contributions</u>	<u>5</u>
<u>4.1 Employer Matching Contributions</u>	<u>5</u>
<u>4.2 Employer Discretionary Non-matching Contributions</u>	<u>6</u>
<u>ARTICLE V Administration of the Plan</u>	<u>6</u>
<u>5.1 Administrative Committee</u>	<u>6</u>
<u>5.2 Employer Contributions of Cash and Dividends</u>	<u>7</u>
<u>5.3 Investment in Tyson Stock</u>	<u>7</u>

5.4 No Interest to be Paid	7
5.5 Dividends to be Used to Purchase Additional Shares	7
5.6 Not Transferable	8
5.7 Voting Rights	8
5.8 Costs of the Plan	8
5.9 Brokerage Costs	8
5.10 Indemnification	8
ARTICLE VI Reports and Delivery of Share Certificates	8
6.1 Quarterly Reports	8
6.2 Delivery of Share Certificates	8
ARTICLE VII Amendment and Termination of the Plan	9
ARTICLE VIII Adjustments Upon Changes in Stock	9
ARTICLE IX Miscellaneous Provisions	10
9.1 No Contract of Employment Intended	10
9.2 Information Available	10
9.3 Securities Laws Restrictions	10
9.4 Waiver	10
9.5 Notices	11
9.6 Severability	11
9.7 Governing Law	11
9.8 Rules of Construction	11
9.9 Plan Year	11
9.10 Designation of Beneficiary	11
9.11 Lost Participants	11

PURPOSE OF THE PLAN

The purpose of the Tyson Foods, Inc. Employee Stock Purchase Plan (the "Plan") is to provide the employees of Tyson Foods, Inc. ("Tyson") and its Participating Affiliates a convenient way to acquire shares of Tyson's Class A Common Stock through periodic investment and thus maintain and stimulate employee interest in the growth and profitability of Tyson by means of an opportunity to share in a proprietary interest in Tyson. The purpose of this amendment and restatement of the Plan is to incorporate all prior amendments to the Plan since it was last amended and restated as effective August 1, 2003. This amendment and restatement is effective as of October 1, 2008.

ARTICLE I

Definitions

1.1 Affiliate. "Affiliate" shall include all wholly-owned subsidiaries of Tyson and any other entity which may be designated from time to time as such by the Board of Directors of Tyson.

1.2 Base Earnings. "Base Earnings" means the amount of regular salary or wages, including overtime payments and commission payments, but does not include discretionary and non-discretionary bonuses or other irregular payments made by an Employer to a Participant.

1.3 Committee. "Committee" shall mean the administrative committee appointed by the Board of Directors of Tyson to carry out the purposes of the Plan as set forth in Section 5.1 below.

1.4 Effective Date. The "Effective Date" of this Plan, as amended and restated, is October 1, 2008.

1.5 Eligible Employee. "Eligible Employee" means any person (including a corporate officer) who is employed as a common law employee and classified as working in the regular service of Tyson or a Participating Affiliate; provided, however, such term shall not include any person who is a member of a collective bargaining unit and who is covered by a collective bargaining agreement which does not provide for coverage of such person under this Plan.

1.6 Employer. "Employer" means Tyson and all Participating Affiliates.

1.7 Leave of Absence. "Leave of Absence" means absence from the active service with Tyson or an Affiliate, with the permission of the Employer, by reason of illness, military service, or for any other reason as approved or allowed by the Employer's personnel policies. Such Leave of Absence will not terminate an Eligible Employee's Service, provided he returns to active employment at the expiration of his leave in accordance with his Employer's policy with respect to permitted absences. An Eligible

Employee whose Service is terminated and who is subsequently re-employed by Tyson or an Affiliate will, for all purposes of the Plan, be considered a new employee as of the effective date of his reemployment.

1.8 Pay Period, Payday. "Pay Period" means the interval of a time for which an Eligible Employee regularly receives his compensation, and "Payday" means the day on which the Eligible Employee regularly receives his compensation for the Pay Period.

1.9 Participant. "Participant" means an Eligible Employee who has elected to participate in the Plan in accordance with Article II until the Participant withdraws from the Plan and receives a complete distribution of Stock and cash credited to his Plan account.

1.10 Participating Affiliate. "Participating Affiliate" means an Affiliate that has adopted the Plan with the consent of the Board of Directors of Tyson. If an organization which is or has become an Affiliate ceases to be an Affiliate, such organization shall be deemed to have withdrawn from participation in the Plan.

1.11 Payroll Deduction Authorization. The "Payroll Deduction Authorization" shall be in a form specified by the Plan Administrator and shall direct the Employer to withhold from a Participant's paycheck a specified dollar amount or a specified percentage of his Base Earnings to be used for the purchase of Stock under this Plan.

1.12 Plan Administrator. The "Plan Administrator" shall be responsible for the administration of the Plan and, in lieu of any designation by the Board of Directors of Tyson to the contrary, Tyson shall serve as the Plan Administrator and shall act through the Committee as its representative.

1.13 Prevailing Market Price. The term "Prevailing Market Price" shall mean:

(a) the actual purchase price if purchased in the open market; or

(b) if treasury shares are purchased:

(i) if the Stock is not at the time listed or admitted to trading on a stock exchange or in the over-the-counter market under the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"), the Prevailing Market Price shall be the mean between the lowest reported bid price and highest reported asked price of the Stock on the date in question in the over-the-counter market, as such prices are reported in a publication of general circulation selected by Tyson and regularly reporting the market price of the Stock in such market; or

(ii) if the Stock is at the time listed or admitted to trading in the over-the-counter market under NASDAQ or on any stock exchange, then the Prevailing Market Price shall be the reported closing sale price of the Stock on the date in question on the principal exchange on which the Stock is then listed or admitted to trading. If no reported sale of Stock takes place on the date in question, then

the reported closing asked price of the Stock on such date shall be determinative of Prevailing Market Price.

(c) if a combination of treasury shares and shares purchased in the open market are utilized, then the Prevailing Market Price shall be determined by the actual purchase(s).

1.14 Service. "Service" means that period of continuous uninterrupted employment with Tyson or any one or more of its Affiliates from an Eligible Employee's first day of employment until his date of termination of employment with all Affiliates. However, in the case of an Affiliate which has been acquired by Tyson through the acquisition of substantially all of the assets or all of the stock of the Affiliate, Service shall include employment prior to the date on which such Affiliate is designated as a Participating Affiliate on such terms as the Board of Directors of Tyson may expressly provide. Service with two or more Affiliates during consecutive periods shall be considered continuous service with one Affiliate.

1.15 Stock. All references herein to "Stock" shall mean shares of Class A Common Stock of Tyson.

1.16 Termination of Service. "Termination of Service" means any absence from the employment of Tyson or any Affiliate (including, but not limited to, absences by reason of discharge or resignation) which is not deemed a Leave of Absence as defined herein.

ARTICLE II Eligibility to Participate

Except as provided below, each Eligible Employee of Tyson or of a Participating Affiliate who has completed three full calendar months of Service shall be eligible to participate in the Plan commencing on the first Payday that falls on or after the first day of the immediately succeeding month.

ARTICLE III Employee Participation and Contributions

3.1 Voluntary, Non-Discriminatory Plan. Participation in this Plan shall be voluntary and all Participants shall have the same rights and privileges under the Plan, except to the extent the terms of the Plan otherwise provide.

3.2 How an Employee Elects to Participate. Except as provided in Sections 3.9 and 4.2 below, an Eligible Employee may elect to participate in the Plan by executing or otherwise authorizing a "Payroll Deduction Authorization" (within the time period prescribed by the Plan Administrator) prior to the Payday on which the Eligible Employee will begin participation. By confirming a Payroll Deduction Authorization, an Eligible Employee also affirms his acceptance of the terms of this Plan.

3.3 Limits on Contribution. The minimum payroll deduction shall be one dollar (\$1.00) per week and the maximum shall be twenty-five dollars (\$25.00) per week, as the

Participant shall elect, or, in the alternative, the minimum payroll deduction shall be one percent (1%) of Base Earnings and the maximum shall be twenty percent (20%) of Base Earnings. At such times as permitted by the Plan Administrator, a Participant may increase or decrease his contribution under the Plan by any multiple of one dollar (\$1.00) or one percent (1%); however, no Eligible Employee may contribute, in any one year, more than twenty percent (20%) of his Base Earnings or, if he elects a payroll deduction of a specific dollar amount, twenty-five dollars (\$25.00) per week.

3.4 Voluntary Withdrawal from the Plan. A Participant who remains employed by an Employer may withdraw from the Plan by submitting a notice of cancellation of his Payroll Deduction Authorization in the manner and to the person determined by the Plan Administrator from time to time, but no later than prior to the Payday for which the cancellation is to be effective. Any Participant who so withdraws from the Plan may renew his participation in the Plan as soon as administratively practicable and will be entitled to withdraw his Stock from the Plan only in accordance with Section 6.2.

3.5 Termination of Service Means Withdrawal from Plan. Upon a Participant's Termination of Service, the Participant will be deemed to have withdrawn from the Plan as of his last regular Payday.

3.6 Effect of Participant's Withdrawal from Plan. On and after the effective date of a Participant's withdrawal from the Plan, no further contribution under the Plan shall be permitted by or made for the Participant, except as may be provided pursuant to this Section 3 and Section 4.2 below.

3.7 Bookkeeping Accounts. All payroll deductions made for a Participant shall be credited to the Participant's Plan account. Such payroll deductions shall be commingled with the general assets of Tyson and no separate fund shall be established. Participant accounts are kept solely for bookkeeping purposes.

3.8 Distributions from Plan Upon Termination of Service. Upon a Participant's Termination of Service for any reason other than death, the Committee shall obtain a share certificate representing the number of shares of Stock to which the Participant is entitled and shall send the share certificate and a check for the sum of uninvested funds held to the credit of such Participant, by ordinary mail or other mode of delivery deemed appropriate by the Committee, to the Participant's mailing address last known to the Employer. Upon the death of a Participant and upon receipt by the Employer of proof of identity and existence at the Participant's death of a validly designated beneficiary under the Plan, the Committee shall obtain and forward the share certificate and check for uninvested funds in the manner provided above to such beneficiary. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such death, any Stock and cash credited to the Participant under the Plan shall be payable to the spouse to whom the Participant was legally married at the time of his or her death and, if the deceased Participant is not survived by a spouse to whom he or she was legally married at the time of the Participant's death, any such Stock and cash shall be payable to the executor or administrator of the estate of the Participant. No beneficiary shall, prior to the death of the Participant by whom he or she has been designated,

acquire any interest in the Stock or cash credited to the Participant under the Plan. Following a Termination of Service, a Participant (or beneficiary) shall have the continuing obligation of keeping the Plan Administrator apprised of his or her current mailing address.

3.9 Repurchases. Prior to the date that a Participant experiences a Termination of Service and for a limited period of time following a Termination of Service, as established by the Plan Administrator from time to time pursuant to procedures uniformly applied, a Participant may sell shares of Stock purchased under the Plan to Tyson at the Prevailing Market Price pursuant to such further procedures and conditions as may be established by the Plan Administrator from time to time

ARTICLE IV Employer Contributions

4.1 Employer Matching Contributions .

(a) Each Participant who has completed at least one year of Service (as defined above) with Tyson or a Participating Affiliate shall be entitled to Employer matching contributions on that Participant's contributions, if any, made following completion of the first year of Service in the amount and manner as determined in Subsections (b) and (d) of this Section.

(b) Contributions made pursuant to this Section 4.1 shall match only a portion of the Participant contributions made pursuant to Section 3.2 above. Such matching contributions shall be equal to a percentage, not to exceed fifty percent (50%), of the first ten percent (10%) of Base Earnings deferred by an eligible Participant under Section 3.2 of the Plan. The Board of Directors of Tyson (or any committee of the Board of Directors) shall determine from time to time on a prospective basis the level of contributions to be made pursuant to this Section 4.1(b), consistent with the general parameters set forth in the immediately preceding sentence. The Committee shall advise eligible Participants of any change in the level of matching contributions as soon as administratively practicable.

(c) Matching contributions generally will be made at or about the same time as the payroll deductions for the Participant contributions to which they relate.

(d) Notwithstanding any other provisions of the Plan to the contrary, matching contributions shall be allocated to otherwise eligible Participants in accordance with the following provisions:

(i) Except as provided in the immediately succeeding provisions of this Section 4.2(d)(i), Participants who otherwise are entitled to matching contributions under this Plan shall have such contributions made to a matching account under the Plan. Matching contributions to be made on behalf of each Participant who is determined not to be a "highly compensated employee", within the meaning of Section 414(q) of the Internal Revenue Code of 1986, as amended, for any plan year of a designated retirement plan qualified under Section 401(a) of

the Internal Revenue Code of 1986, as amended, and maintained by the Employer with respect to which the Participant is an eligible member (a 'Tax-Qualified Plan') shall be credited during that plan year directly to an appropriate account established for such Participant under the Tax-Qualified Plan, with such amounts to be administered and distributed pursuant to the related terms of the Tax-Qualified Plan. Notwithstanding the immediately preceding sentence, if an Employer does not maintain a Tax-Qualified Plan or does not expressly designate a Tax-Qualified Plan, by amendment or otherwise, as the recipient of such matching contributions, then such contributions shall be credited to a matching account under the Plan.

(ii) Tyson retains the discretion to suspend for any specific or indefinite periods of time the making of matching contributions hereunder to otherwise eligible Participants as may from time to time be determined to be in the best interests of Tyson by its Board of Directors (or any committee thereof). Any such suspension of matching contributions may be applied to all eligible Participants or to one or more identifiable classes of employees and may be implemented at any time. Participants affected by any such suspension shall be notified of the implementation, and lifting, of the suspension, in each case as soon as administratively practicable. Any affected Participant shall not be entitled to matching contributions for the Pay Periods (or other periods of time) during which the suspension is effective, as determined by the Board of Directors of Tyson (or any committee thereof).

4.2 Employer Discretionary Non-matching Contributions. In addition to Employer matching contributions made pursuant to Section 4.1, Tyson, in the sole discretion of its Board of Directors, or any other Employer may from time to time make non-matching contributions of cash or shares of Stock to the Plan for allocation to certain Participants in the Plan or to certain other Eligible Employees who are not enrolled in the Plan. Such contributed shares shall be held for the account of the Participant (or combined with any existing account of the Participant) and administered pursuant to all provisions of the Plan. If directed by the Plan Administrator, the Committee shall cause shares of Stock purchased with such discretionary contributions to bear appropriate legends referring to the terms, conditions and restrictions, if any, applicable to such contributions or necessary to permit the Employer to comply with all applicable securities laws. All of such contributed shares at all times shall remain the property of the Participant and shall remain subject to any legal or contractual restrictions to which the shares may have been subject at the time of the contribution

ARTICLE V

Administration of the Plan

5.1 Administrative Committee. To carry out the purposes of the Plan, the Plan Administrator exercises its authority through the Committee, which shall consist of not less than three members who may be officers and/or directors of Tyson. The Plan Administrator may remove members from or add members to the Committee at any time, within its discretion, and may fill vacancies on the Committee. An individual member of the Committee may not

participate in any decision exclusively affecting his own participation in the Plan. The Committee shall select one of its members as Chairman, and shall hold meetings at such times and places as it may determine. Acts of a majority of the Committee at which a quorum is present, or acts reduced to or approved in writing by a majority of the members of the Committee, shall be valid acts of the Committee. The Committee shall have the sole authority, in its absolute discretion, to adopt, amend and rescind such rules and regulations as, in its opinion, may be advisable in the administration of the Plan; to construe and interpret the Plan, the rules and regulations; and to make all other determinations deemed necessary or advisable for the administration of the Plan. All decisions, determinations, and interpretations of the Committee shall be binding on all Participants. The Committee may employ such legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any such counsel or consultant and any computation received for any such consultant or agent. Expenses incurred by the Plan Administrator or the Committee in the engagement of such counsel, consultant or agent shall be paid by Tyson. No member or former member of the Committee or of the Board of Directors of Tyson shall be liable for any action or determination made in good faith with respect to the Plan or any awards granted hereunder. The Committee, in its sole discretion, may delegate all or any portion of its duties hereunder to other individuals or entities.

5.2 Employer Contributions of Cash and Dividends . Each Employer shall remit the funds deducted from payrolls under this Plan, plus any Employer contributions of cash and dividends received on Stock held by the Plan, to the brokerage firm or firms designated by the Committee.

5.3 Investment in Tyson Stock . As soon as practicable after receipt of funds remitted under the Plan, the Committee or its designated representative shall purchase on behalf of Participants shares of Stock either directly from Tyson or in the open market at Prevailing Market Prices. The Committee shall purchase the maximum number of shares purchasable with such funds. Such shares shall be purchased on an aggregate basis rather than on a per Participant basis. The number of shares to be purchased is to be determined by the aggregate amount of funds available to buy a whole share or multiple thereof. While no fractional shares will be acquired or distributed, a Participant's interest in the Plan will be accounted for to include, and will reflect, the fractional share, if any, which could have been acquired with the funds allocable to him if fractional shares were purchased.

5.4 No Interest to be Paid . No interest shall be credited to Plan accounts for any reason.

5.5 Dividends to be Used to Purchase Additional Shares . All cash dividends received with respect to shares of Stock registered in the name of the brokerage firm shall be used by it to purchase additional shares for Participants in proportion to their specified interest in the shares upon which the dividends were paid. Stock dividends, warrants and rights of any kind received with respect to such shares shall be held and distributed in the manner provided in Sections 3.8 or 6.2, herein, as applicable; provided, however, that the Committee, in its sole discretion, may elect to pay dividends received which are attributable to Stock allocable to Participants who have

withdrawn from the Plan (pursuant to Section 3.4 above) directly to such Participants on an annual basis.

5.6 Not Transferable. Neither payroll deductions credited to a Participant's Plan account nor a Participant's rights to acquire shares of Stock or his undivided interest in the shares of Stock registered in the name of the broker may be assigned, sold, pledged, or alienated except by testate or intestate succession, and any attempt to do so shall be void. In addition, such credits, rights and undivided interests may not be encumbered by lien or security interest of any kind and shall not be liable for the debts of a Participant or subject to attachment, or to any judgment rendered against the Participant or to the process of any court in aid or execution of any judgment so rendered.

5.7 Voting Rights. Unless the Committee determines otherwise from time to time, Participants shall have the power to vote all shares held in the name of the broker in any and all matters which shall be the subject of the vote for the shareholders.

5.8 Costs of the Plan. The costs of maintaining records and executing transfers under the Plan shall be paid by Tyson or allocated to and paid by Participating Affiliates, as the Board of Directors of Tyson may direct.

5.9 Brokerage Costs. Brokerage expenses incurred in the purchase of shares shall be included as part of the cost of shares of Stock to Participants.

5.10 Indemnification. Neither Tyson, the Committee and its delegates, nor any broker through whom purchase orders are executed pursuant to this Plan shall have any responsibility or liability for any action or determination in good faith including, without limiting the generality of the foregoing, any action with respect to price, time, quantity or other conditions and circumstances of the purchase of shares of Stock under the terms of the Plan. Tyson shall indemnify and hold harmless any officer, employee, agent, delegee or representative who incurs damage or loss, including the expense of defense thereof, in connection with the performance of the duties specified herein.

ARTICLE VI

Reports and Delivery of Share Certificates

6.1 Quarterly Reports. The Committee shall make quarterly reports to each Participant, specifying the status of his interest in the Plan through the last day of each calendar quarter.

6.2 Delivery of Share Certificates.

All shares of Stock purchased under the Plan from contributions made by Participants, contributions made by an Employer or dividends received by the Plan, will be issued to Participants pursuant to the following rules:

- (a) Only in increments of ten (10) shares from any account.

- (b) Only upon receipt by the Committee of a request from the Participant setting forth the amount of shares requested to be issued.
- (c) Distributions of Stock will be limited to twice monthly and will be made as soon as administratively feasible following the date the request was made.
- (d) Distributions of Stock purchased from contributions made by Participants may not exceed the amount of such Stock set forth on their last quarterly statement.
- (e) Distributions of Stock purchased from Employer contributions may not exceed the amount of such Stock set forth on their last report from the immediately preceding calendar year.
- (f) Distributions of dividends shall be available on the same basis as the contributions to which they relate, except to the extent the Plan Administrator determines otherwise.
- (g) The order in which shares of Stock are withdrawn from a Participant's accounts shall be determined pursuant to rules and regulations to be adopted by the Committee.

ARTICLE VII

Amendment and Termination of the Plan

The Board of Directors of Tyson or its delegate may, at any time and in its discretion, alter, amend, suspend or terminate the Plan or any part thereof. The cash balances and shares of Stock credited to Participants' accounts shall be delivered to Participants as soon as administratively practicable after the Plan's termination, except to the extent the Board of Directors of Tyson expressly determines otherwise. Notice of any material amendment, suspension or termination of the Plan, in whole or in part, shall be given to each Participant as soon as practicable after such action is taken. If not previously terminated by the Board of Directors of Tyson, the Plan shall terminate automatically on July 31, 2013. If the Plan, as amended and restated effective August 1, 2003, is not approved by the shareholders of Tyson at the next regularly scheduled meeting of shareholders, the Plan shall terminate automatically as of the date of such shareholders meeting.

ARTICLE VIII

Adjustments Upon Changes in Stock

If any change is made in the stock subject to the Plan (through merger, consolidation, reorganization, recapitalization, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or otherwise), the number of shares and price per share of Stock subject to outstanding rights under the Plan shall be adjusted automatically to reflect such change.

In the event of (1) a dissolution or liquidation of Tyson, (2) a merger or a consolidation in which Tyson is not the surviving corporation, or a reverse merger in which Tyson is the surviving corporation but the shares of Stock by virtue of the merger are converted into other property, whether in the form of securities, cash or otherwise, or (3) any other capital reorganization in which more than fifty percent (50%) of the shares of Tyson entitled to vote are exchanged, the Plan shall terminate, unless another corporation assumes the responsibility of continuing the operation of the Plan or the Plan Administrator determines in its discretion that the Plan shall nevertheless continue in full force and effect. If the Plan Administrator elects to terminate the Plan, the Committee shall send to each Participant a stock certificate representing the number of whole shares of Stock to which the Participant is entitled. In addition, the Committee shall send checks drawn on the Plan's account to each Participant in an amount equal to the sum of the uninvested funds held to the credit of each Participant in the manner provided in Section 3.8 above.

Any issue by Tyson of any class of preferred stock, or securities convertible into shares of common stock or preferred stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to the number or price of shares of Stock subject to any grant except as specifically provided otherwise in this Article VIII.

The grant of any right to a person pursuant to the Plan shall not affect in any way the right or power of Tyson to make adjustments, reclassifications, reorganizations or changes of its capital or business structure or to merge or to consolidate or to dissolve, liquidate or sell, or transfer all or any part of its business or assets.

ARTICLE IX

Miscellaneous Provisions

9.1 No Contract of Employment Intended. The granting of any right to a person pursuant to this Plan shall not constitute an agreement or understanding, express or implied, on the part of Tyson or any Affiliate to employ such person for any specified period.

9.2 Information Available. If required by law, the offered shares of Tyson shall be registered under the Securities Act of 1933 on Form S-8, or such other form as shall be specified by the Securities and Exchange Commission, and Tyson shall deliver to each Participant a copy of the prospectus or such other information as may be required from time to time as required.

9.3 Securities Laws Restrictions. The Plan Administrator reserves the right to place an appropriate legend on any certificate representing shares of Stock issuable under the Plan with any such legend reflecting restrictions on the transfer of the shares as may be necessary to assure the availability of any applicable exemptions under federal and state securities laws to which Tyson or the Plan Administrator deem appropriate.

9.4 Waiver. No liability whatever shall attach to or be incurred by Tyson or any Affiliates, or by any of their past, present or future shareholders, officers, employees or directors, under or by reason of any of the terms, conditions or agreements contained in this Plan or implied therefrom, and any and all liabilities of, and any and all rights and claims against, Tyson

or any Affiliate, or any such shareholder, officer, employee or director, whether arising at common law or in equity or created by statute or constitution or otherwise, pertaining to this Plan, are hereby expressly waived and released by each Participant as a part of the consideration for any benefits provided by an Employer under this Plan.

9.5 Notices. All notices or other communications by a Participant to the Plan Administrator under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Benefits Department c/o Tyson Foods, Inc. 2210 West Oaklawn Drive, Springdale, Arkansas 72762-6999 or at such other location as may be expressly designated by the Plan Administrator for the receipt of one or more categories of Plan communications.

9.6 Severability. Each of the Sections included in the Plan is separate, distinct and severable from the other and remaining Sections of the Plan, and the invalidity or unenforceability of any Section shall not affect the validity and enforceability of any other Section or Sections of the Plan. Further, if any Section of this Plan is ruled invalid or unenforceable by a court of competent jurisdiction because of a conflict between such Section and any applicable law or public policy, such Section shall be valid and enforceable to the extent such Section is consistent with such law or public policy.

9.7 Governing Law. The construction, validity and operation of this Plan shall be governed by the laws of the State of Delaware.

9.8 Rules of Construction. Throughout this Plan, the masculine includes the feminine, and the singular includes the plural, and vice versa, where applicable.

9.9 Plan Year. The Plan's plan year and the fiscal year shall end on December 31 of each year.

9.10 Designation of Beneficiary. A Participant may file a written designation of a beneficiary who is to receive any Stock and/or cash. Such designation of a beneficiary may be changed by the Participant at any time in writing delivered to his Employer.

9.11 Lost Participants. In the event the Committee or its designee, after reasonable inquiry, determines that it is unable to locate a Participant or beneficiary whose account is otherwise payable, the Committee (or such designee) may direct that such account shall be removed from the Plan's active records; provided, however, that the Participant's account shall be reinstated as an active account if and in the event the Participant or beneficiary thereafter shall make a valid claim therefor upon presentation of proper identification. Notwithstanding the foregoing, if, upon the expiration of any applicable dormancy period, the whereabouts of a Participant or beneficiary remains unknown because of a failure to keep the Plan Administrator apprised of his or her current mailing address in accordance with Section 3.8, the Plan Administrator may turn over the property attributable to any such Participant's account to the unclaimed property unit of the state of the Participant's (or beneficiary's) last known mailing address pursuant to that state's escheat laws. In such event, if a Participant (or beneficiary) subsequently makes himself or herself known to the Plan Administrator or the Committee, the sole recourse of such Participant (or beneficiary) shall be against the state to whom the property was distributed and there shall be no reinstatement of the Participant's account under the Plan.

IN WITNESS WHEREOF, Tyson has caused this indenture to be made as of the 14th day of November, 2008.

TYSON FOODS, INC.

By: /s/ Dennis Leatherby

Title: Exec. Vice President and Chief
Financial Officer

ATTEST: /s/ R. Read Hudson

Title: Vice President, Assoc. General Counsel
and Secretary

**EXECUTIVE SAVINGS PLAN
OF
TYSON FOODS, INC.**

(Restated as of January 1, 2009)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	2
ARTICLE II ELIGIBILITY FOR PARTICIPATION	6
ARTICLE III CREDITS TO ACCOUNTS	7
ARTICLE IV ACCOUNTS AND EARNINGS CREDITED	10
ARTICLE V VESTING	11
ARTICLE VI UNFORESEEABLE EMERGENCY PAYMENTS	11
ARTICLE VII DEATH BENEFITS	11
ARTICLE VIII PAYMENT OF BENEFITS	12
ARTICLE IX ADMINISTRATION OF THE PLAN	15
ARTICLE X AMENDMENT AND TERMINATION OF THE PLAN	16
ARTICLE XI ADOPTION OF PLAN BY AFFILIATES	17
ARTICLE XII MISCELLANEOUS PROVISIONS	17
APPENDIX A	A-1

**EXECUTIVE SAVINGS PLAN
OF
TYSON FOODS, INC.**

This Plan, adopted effective April 1, 1991 by Tyson Foods, Inc., as last amended and restated herein as of January 1, 2003, is an unfunded, non-qualified deferred compensation plan designed to provide solely for a select group of management and highly compensated employees of Tyson Foods, Inc. and its affiliates an opportunity to provide for retirement income. All amounts credited on the books of each Employer for the accounts of Members under this Plan at all times shall remain as unfunded, general obligations of the Employer to its participating employees, it being the intention that such obligations to Members under the Plan be paid, when due, solely out of the general assets of the Employer available at such time.

The Plan, as amended and restated herein, contemplates the adoption of the Plan by IBP, inc. (now known as Tyson Fresh Meats, Inc.) and its affiliates that maintain the Retirement Income Plan of IBP, inc., which was frozen effective as of December 31, 2002.

Tyson Foods, Inc. now desires to amend and restate the Plan, effective as of January 1, 2009, except as otherwise provided herein, to conform the provisions of the Plan to the requirements under Section 409A of the Internal Revenue Code and the regulations and rulings promulgated thereunder since the addition of Section 409A to the Internal Revenue Code.

The Plan shall be administered in the manner set forth in the following Plan, to-wit:

ARTICLE I
Definitions

The following definitions shall be used in this Plan unless the context of the Plan clearly indicates another meaning:

1.1 Account. “Account” means the bookkeeping accounts established and maintained by the Employer, as adjusted for credits or charges, to reflect the interest of a Member under the Plan and shall include the following:

(a) Elective Deferral Account. Each “Elective Deferral Account” reflects credits to a Member’s Account made on his or her behalf pursuant to Section 3.1 from and after 2005, as adjusted to reflect designated rates of return and other credits or charges.

(b) Employer Match Account. Each “Employer Match Account” reflects credits to a Member’s Account made on his or her behalf pursuant to Section 3.2 from and after, as adjusted to reflect designated rates of return and other credits or charges.

(c) Non-elective Contribution Account. Each “Non-elective Contribution Account” reflects credits to a Member’s Account made on his or her behalf pursuant to Section 3.3 from and after 2005, as adjusted to reflect designated rates of return and other credits or charges.”

(d) Pre-2005 Elective Deferral Account. Each “Pre-2005 Elective Deferral Account” reflects credits to a Member’s Account made on his or her behalf pursuant to Section 3.1 prior to 2005, as adjusted to reflect designated rates of return and other credits or charges.

(e) Pre-2005 Employer Match Account. Each “Pre-2005 Employer Match Account” reflects credits to a Member’s Account made on his or her behalf pursuant to Section 3.2 prior to 2005, as adjusted to reflect designated rates of return and other credits or charges.

(f) Pre-2005 Non-elective Contribution Account. Each “Pre-2005 Non-elective Contribution Account” reflects credits to a Member’s Account made on his or her behalf pursuant to Section 3.3 prior to 2005, as adjusted to reflect designated rates of return and other credits or charges, including “rollover accounts” formerly maintained under the Hudson Foods, Inc. Executive Salary Deferral Plan and “Floor Accounts.”

The Elective Deferral Accounts, Employer Match Accounts and Non-elective Contribution Accounts are collectively referred to herein as the “Post-2004 Accounts” and the Pre-2005 Elective Deferral Accounts, Pre-2005 Employer Match Accounts and Pre-2005 Non-elective Contribution Accounts are collectively referred to herein as the “Pre-2005 Accounts.”

1.2 Annual Bonus. “Annual Bonus” means an amount paid to a Member as bonus compensation as a component of his or her Compensation, but which is specifically classified as an annual bonus payment by the Employer relating to services performed during one or more performance periods of at least twelve (12) months’ duration.

1.3 Beneficiary. “Beneficiary” means such person or persons or legal entity as may be designated by a Member to receive benefits hereunder after his or her death, or, if none is so designated, the person or entity hereinafter provided in Section 2.5.

1.4 Bonus. “Bonus” means Annual Bonuses and other regularly scheduled payments as may be classified by the Employer as bonuses from time to time.

1.5 Code. “Code” means the Internal Revenue Code of 1986, as now in effect or as amended from time to time. A reference to a specific provision of the Code shall include such provision and any applicable regulation pertaining thereto.

1.6 Committee. “Committee” means a committee consisting of not less than three members who may be officers and/or directors of Tyson Foods, Inc. appointed by the Board of Directors of Tyson Foods, Inc. to carry out the purposes of the Plan.

1.7 Compensation. “Compensation” means wages, including Bonuses, within the meaning of Code Section 3401(a) (for purposes of income tax withholding at the source) and all other payments of compensation to an Employee by an Employer (in the course of the entity’s trade or business) during a Plan Year for which the Employer is required to furnish the Employee a written statement as required to be reported under Code Sections 6041(d), 6051(a)(3) and 6052 (but without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed). Compensation shall include Elective Deferrals and any amount which would have been paid during a Plan Year, but was contributed by an Employer on behalf of an Employee pursuant to a salary reduction agreement which is not includable in the gross income of the Employee under Section 125, 132(f)(4), 402(g)(3) or 457 of the Code. Compensation shall not include the following:

(a) reimbursements or other expense allowances, cash and noncash fringe benefits, moving expense allowances, any distributions from a plan of deferred compensation or Employer contributions or credits to a plan of deferred compensation which are not includable in the Employee's gross income for a taxable year in which contributed or credited (other than Elective Deferrals), welfare benefits, and amounts realized from the exercise of non-qualified stock options or when restricted stock (or property) held by an employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(b) other amounts which received special tax benefits; and

(c) special non-recurring forms of remuneration.

1.8 Elective Deferrals. “Elective Deferrals” means reductions pursuant to a Member’s Salary Reduction Agreement, in the whole percentages (permitted below in Section 3.1) of the

Member's Compensation, which amounts are credited by the Employer to the Member's Elective Deferral Account under the Plan, as provided below.

1.9 Eligible Employee. "Eligible Employee" shall mean an Employee who the Employer reasonably projects, based on his or her regular rate of pay, will have Compensation for the determination year that equals or exceeds \$110,000 (as adjusted under Section 414(q)(1) of the Code) or who is otherwise determined to be a "Highly Compensated Employee," within the meaning of Section 414(q) of the Code.

1.10 Employee. "Employee" means any person who is designated on the records of the Employer as being employed by the Employer for purposes of the Federal Insurance Contributions Act.

1.11 Employer. "Employer" means Tyson Foods, Inc., or any corporation into which it may be merged or consolidated, or any affiliate that may adopt the Plan with approval of the Board of Directors of Tyson Foods, Inc.

1.12 Employer Match. "Employer Match" shall mean the credit, if any, made to the Member's Employer Match Account by the Employer pursuant to Section 3.2 below.

1.13 Enrollment Period. "Enrollment Period" means, with respect to deferrals of Compensation generally, each election period designated by the Committee with respect to the Plan Year during which new Members may establish, and current Members may amend, their rates of Elective Deferrals under their Salary Reduction Agreements which ends prior to the first day of each Plan Year; provided, however, to the extent the Committee may permit:

(a) with respect to a deferral of Annual Bonus, the election period established by the Committee which ends prior to the earlier of the first day of each Plan Year or the first day of the applicable performance period; provided, however, if the Annual Bonus qualifies as performance-based compensation within the meaning of Treasury Regulations Section 1.409A-1(e) and satisfies the criteria under Treasury Regulations Section 1.409A-2(a)(8), the election period may end as late as six (6) months prior to the end of the performance period; and

(b) in the case of a Member who is first eligible to defer Compensation as of any date other than January 1, the 30-day period beginning as of the date the Eligible Employee becomes eligible to be a Member.

1.14 Member. "Member" means any Eligible Employee who has been designated for participation as provided in Article II below; provided, however, that any Employee who ceases to be an Eligible Employee shall remain an inactive Member until his or her benefits are paid pursuant to Article VII or VIII below.

1.15 Non-elective Contributions. "Non-elective Contributions" means an amount credited to a Member's Non-elective Contribution Account by the Employer.

1.16 Plan. "Plan" means the savings and profit sharing plan set forth in this document and all subsequent amendments thereto which in the aggregate are intended by the Employer to constitute a non-qualified savings and profit sharing retirement plan. The name of the Plan shall be the "Executive Savings Plan of Tyson Foods, Inc."

1.17 Plan Year. "Plan Year" means, prior to April 1, 1996, each twelve-month period commencing April 1, the period from April 1, 1996 to December 31, 1996 and, thereafter, the calendar year.

1.18 Salary Reduction Agreement. "Salary Reduction Agreement" means an agreement entered into between the Member and the Employer during the Enrollment Period by which the Member agrees to accept a reduction in his or her Compensation from the Employer equal to any whole percentage, per payroll period, not to exceed the percentages permitted under Section 3.1(a) below. A Salary Reduction Agreement shall be irrevocable by the Member except as otherwise provided herein and shall apply to each payroll period during such time in which the Member receives Compensation from the Employer while the Salary Reduction Agreement is in effect.

1.19 Separation from Service. "Separation from Service" means that a Member has experienced a separation from service with the Employer and its affiliates within the meaning of Section 409A(a)(2)(A)(i) of the Code. Whether a Separation from Service takes place is determined based on the facts and circumstances surrounding the termination of the Member's employment and whether there is an intent for the Member to provide significant services for the Employer or any affiliate following such termination. A Member's absence from work due to military leave, sick leave, or other *bona fide* leave of absence (such as temporary employment by the government) shall not constitute a Separation from Service if the period of such leave does not exceed six (6) months or such longer period as is provided either by statute or by contract. If the period of leave exceeds six (6) months and the Member's right to reemployment after such extended leave is not provided either by statute or by contract, the Member shall be deemed to have incurred a Separation from Service on the first day immediately following such six-month period. A termination of employment will not be considered a Separation from Service if:

(i) the Member continues to provide services as an employee of the Employer or any affiliate at an annual rate that is twenty percent (20%) or more of the services rendered, on average, during the immediately preceding three (3) full calendar years of employment (or, if employed less than three (3) years, such lesser period) and the annual remuneration for such services is twenty percent (20%) or more of the average annual remuneration earned during the final three full calendar years of employment (or, if less, such lesser period), or

(ii) the Member continues to provide services to the Employer or any affiliate in a capacity other than as an employee of such entity at an annual rate that is fifty percent (50%) or more of the services rendered, on average, during the immediately preceding three full calendar years of employment (or if employed less than three (3) years, such lesser period) and the annual remuneration for such services is fifty percent (50%) or more of the average annual remuneration earned during the final three (3) full calendar years of employment (or if less, such lesser period).

1.20 Unforeseeable Emergency. “Unforeseeable Emergency” means a severe hardship to the Member resulting from an illness or accident of the Member, the Member’s spouse, or a dependent (as defined in Code Section 152 without regard to Subsections 152(b)(1), (b)(2) and (d)(1)(B) thereof) of the Member, loss of the Member’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Member; provided further that such hardship can not be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of assets (to the extent liquidation would not itself cause severe financial hardship) or by cessation of deferrals under the Plan.

1.21 Valuation Date. “Valuation Date” under the Plan shall mean the last business day of each calendar month, unless otherwise designated by the Committee, and any other day as may be designated by the Committee from time to time.

ARTICLE II

Eligibility for Participation

2.1 Requirements for Participation. Any Eligible Employee who has been designated for Plan membership by the Committee may participate in the Plan commencing as of the Enrollment Period coinciding with or next following the date on which his or her Plan membership is approved by the Committee and processed administratively.

2.2 Cessation of Active Participation. A Member shall cease to be eligible for active participation in the Plan as of any date communicated to the Member by the Committee. A Member who ceases to be eligible for active participation will no longer be eligible to make further Elective Deferrals under the Plan pursuant to Section 3.1, if otherwise eligible to do so, and will no longer be eligible to receive Non-elective Contributions under Section 3.3, but shall continue to be subject to all other terms of the Plan so long as his or her Account has not been fully distributed. Any deferral election then in effect as of the date the Member ceases to be eligible for active participation will be cancelled by action of the Committee as soon as administratively practical, subject to any restrictions on the implementation of the cancellation under Code Section 409A.

2.3 Suspension. Subject to the provisions of Code Section 409A, in the event a Member participates in a plan of an Employer or affiliate intended to qualify under Code Section 401(a) and containing a tax-qualified cash or deferred arrangement qualified under Code Section 401(k), the Member shall be suspended from continued participation under this Plan to the extent required by such other plan as a result of a hardship withdrawal made by such Member under such other plan.

2.4 Participation Following Non-Eligibility. Each Member whose service is terminated and who subsequently is re-employed by the Employer or who otherwise becomes ineligible for active participation in the Plan may be treated under the Plan upon a return to membership as a new Member pursuant to Section 1.13(b) but only if the Member has not been eligible to participate in the Plan (other than with respect to the receipt of earnings credits under Article III) for a period of at least twenty-four (24) months.

2.5 Designation of Beneficiary. Each Eligible Employee on becoming a Member shall:

(a) agree to be bound by the terms and conditions of this Plan; and

(b) designate in writing one or more Beneficiaries to receive his or her benefits in the event of his or her death. If no such designation be made, or if such Beneficiary be deceased without a successor Beneficiary being designated in writing, then the death benefits shall be paid in a lump sum to the surviving spouse of said Member, if any, otherwise to the Member's estate. Should a Beneficiary of a deceased Member die after he or she has started receiving payment under the Plan and if there is no living successor Beneficiary named by the deceased Member, then the remaining benefits shall be paid in accordance with the designation of the Beneficiary. If no such designation is in effect, then the remaining death benefits shall be paid in a lump sum to the surviving spouse of said Beneficiary, if any, otherwise to the estate of the Beneficiary receiving payment at the time of his or her death. Each Member shall be entitled to change his or her designated Beneficiaries from time to time by filing with the Committee a new designation of Beneficiary form, and each change so made shall revoke all prior designations by the Member.

ARTICLE III **Credits to Accounts**

3.1 Members' Elective Deferrals.

(a) Amount of Elective Deferrals. During any applicable Enrollment Period, each Member may elect, pursuant to a Salary Reduction Agreement, to direct the Employer to reduce his or her Compensation, and in lieu thereof, credit to the Elective Deferral Account of such Member an amount equal to such reduction, with such reduction amounts to be in integral percentages, determined as follows:

(i) From one percent (1%) to one hundred percent (100%) of his or her Compensation (net of applicable withholdings), excluding Annual Bonuses, if any; and

(ii) One percent (1%) to one hundred percent (100%) of the amount of any Annual Bonus included in his or her Compensation (net of applicable withholdings).

Members may elect to have Elective Deferrals applied either to Compensation excluding Annual Bonuses, to Annual Bonuses, or both, subject to such rules as may be promulgated from time to time by the Committee. If so specified on a Salary Reduction Agreement, a deferral election will carry over from Plan Year to Plan Year and, in that case, a Member will complete a new election only for a Plan Year for which he or she wishes to change his or her deferral election.

(b) Initial Authorization for Elective Deferrals. All Salary Reduction Agreements shall be in writing or in such other form permitted by the Committee and shall be submitted to the Employer or its designee during the applicable Enrollment Period in accordance with the normal administrative procedures established by the Committee. No Salary Reduction Agreement made pursuant to Section 3.1(a)(i) above shall be given effect unless, at that time, the Member has in effect an election for the maximum before-tax contribution permissible pursuant to the terms of the tax-qualified cash or deferred arrangement then maintained by the Employer or has actually made the maximum before-tax contribution permissible pursuant to the terms of the tax-qualified cash or deferred arrangement then maintained by the Employer.

(c) Crediting Elective Deferrals. Elective Deferrals under the Plan shall be credited by the Employer to the Member's Elective Deferral Account no later than as of the end of the month in which the deferral amounts were deducted from the Member's Compensation.

3.2 Employer Match.

(a) Amount of Employer Match. The Employer shall credit to the Employer Match Account of each Member who has elected to make an Elective Deferral pursuant to Section 3.1 above an amount determined in accordance with the following formula:

(i) an amount determined by applying the matching contribution provisions of the Retirement Savings Plan of Tyson Foods, Inc. (but without regard to any of the restrictive provisions applicable to that plan as a tax-qualified retirement plan, including, without limitation, Sections 401(a)(17), 401(k), 401(m) and 402(g) of the Code) to the sum of the maximum aggregate elective deferrals that could be made by the Member under the tax-qualified cash or deferred arrangement of the Employer and the Elective Deferrals made under the Plan for the period,

(ii) reduced by the maximum amount of matching contributions that could be allocated under the tax-qualified cash or deferred arrangement of the Employer on behalf of the Member for the same period.

(b) Crediting the Employer Match. The Employer Match shall be credited by the Employer to the Member's Employer Match Account no later than as of the end of the month in which the corresponding credit to the Member's Elective Deferral Account is made pursuant to Section 3.1(c) above.

3.3 Non-elective Contributions.

(a) Amount of Non-elective Contributions. An Employer may, in its discretion, make contributions to any Member's Non-elective Contribution Account for one or more Plan Years, as determined in the sole discretion of the Employer. The amount of any contribution made on behalf of a Member pursuant to this Section 3.3 may

be expressed as a percentage of the Member's base salary rate as in effect on the date the amount is credited to the Member's Non-elective Contribution Account in accordance with Section 4.1 below or in any other manner determined by the Employer. The amount of any contributions made pursuant to this Section 3.3 for any Plan Year may vary among Members and may be contributed on behalf of one or more Members and not others.

(b) Crediting Non-elective Contributions Non-elective Contributions shall be credited by the Employer to a Member's Non-elective Contribution Account as of a date determined by the Committee in its sole discretion.

3.4 Timing of Elections. No election to defer a portion of a Member's Compensation shall be made outside of an applicable Enrollment Period. In particular, no election to defer a portion of a Member's Compensation (exclusive of any Annual Bonus) may be made later than the last day of the calendar year immediately preceding the Plan Year in which the Compensation will be earned. Notwithstanding the above, in the case of the first Plan Year in which an Eligible Employee becomes a Member, the Committee may, at its discretion, allow the Member to make an election to defer a portion of the Member's Compensation that will be payable to him or her for that Plan Year (but only with respect to Compensation paid for services performed after the date of the election) within thirty (30) days after the date the Eligible Employee becomes a Member. Except in the case of the first Plan Year in which an Eligible Employee becomes a Member, no election to defer the portion of a Member's Annual Bonus may be made later than six months prior to the last day of the performance period for which the Annual Bonus is payable and only then if the Member has provided services continuously to the Employer or an affiliate from the later of the beginning of the performance period or the date the corresponding performance criteria have been established and, provided further, that the amount of the Member's Annual Bonus has not become readily ascertainable as of the date the election is made.

3.5 Irrevocability of Elections. All elections to defer Compensation under this Article 3 shall become irrevocable as of the last day of the applicable Enrollment Period and may only be made pursuant to an agreement between the Member and the Employer which shall be in such form and subject to such rules and limitations as the Committee may prescribe and shall specify the amount of the Compensation of the Member that the Member desires to defer.

3.6 Effect on Other Plans. The amount of contributions made on behalf of a Member under this Article 3 shall not be deemed to be earnings or compensation for the purpose of calculating the amount of a Member's benefits or contributions under a retirement or deferral plan of an Employer or the basis or amount for any other benefit plan provided by an Employer, except to the extent provided in any such plan. No amount distributed under this Plan shall be deemed to be earnings or a part of the Member's total compensation when determining a Member's benefit under any benefit plan established by an Employer, unless otherwise provided in such plan.

ARTICLE IV
Accounts and Earnings Credited

4.1 Accounts of Members. The Employer shall establish and maintain for each Member the subaccounts described in Section 1.1, in addition to such other subaccounts as otherwise necessary to reflect the terms of the Plan in effect prior to January 1, 1997. Each Account and subaccount shall be credited as required in Article III above and Section 4.4 below.

4.2 Hypothetical Investment of Accounts. Until such time as the Committee directs otherwise, each Member may direct the Committee to hypothetically invest his or her Account among one or more investment options designated by the Committee as the Member shall select by providing written notice to the Committee according to the procedures established by the Plan Administrator for that purpose.

(a) All investment directions, or changes in investment directions, of the Member's Account shall be made in accordance with the procedures established by the Committee.

(b) An investment direction, once given, shall be deemed to be a continuing direction until changed as otherwise provided herein. If no direction is effective for the date a deferral or contribution is to be made, all deferrals or contributions which are to be made for such date shall be treated as invested in such investment option as the Committee may determine.

4.3 Member Directions to Transfer Between Individual Funds. A Member may elect, according to the procedures established by the Committee, to transfer the hypothetical investment of his or her Account among various investment options designated by the Committee. An election under this Section 4.3 shall be effective as of the date that such directions are processed by the Committee in accordance with the procedures established for such purpose.

4.4 Earnings. The Member's Account shall be credited or charged with the rate of return which would have been earned had the Member's Account, or applicable portion thereof, been invested pursuant to the Member's hypothetical investment elections among the designated investment options in accordance with procedures established by the Committee.

4.5 Miscellaneous. A Member's Account shall cease to be credited with hypothetical investment returns as of the Valuation Date that the Account, or applicable portion thereof, is processed for distribution. A Member's Account may be credited with such rate or rates of return in accordance with the most recent investment election properly and timely submitted by the Member to the Committee or its designee in accordance with such rules and procedures designated by the Committee.

ARTICLE V

Vesting

All Account and subaccount balances shall be fully vested at all times; provided, however, that Non-elective Contribution Accounts and Pre-2005 Non-elective Contribution Accounts, and any subaccounts thereof, of any particular Member or categories of Members may be subject to such vesting schedule(s) as the Committee may determine from time to time and communicate to such Member(s).

ARTICLE VI

Unforeseeable Emergency Payments

6.1 Unforeseeable Emergency Payments. Prior to the time that payments otherwise become due in accordance with the provisions of the Plan, the Committee may pay all or a portion of a Member's Post-2004 Accounts (reduced by negative rates of return experienced); provided, however, that any such distribution shall be made only if it is demonstrated that an Unforeseeable Emergency exists and only to the extent necessary to relieve the financial hardship presented by the Unforeseeable Emergency. For the purposes of this Article 6, the Committee shall have the sole and absolute discretion, which shall be exercised in a nondiscriminatory and uniform manner, to determine if an Unforeseeable Emergency exists with respect to a Member.

6.2 Applicable Procedures. Unforeseeable Emergency payments shall be made to a Member only in accordance with such rules, policies, procedures, restrictions, and conditions as the Committee may from time to time adopt. Any distribution under this Article 6 must be limited to the amount reasonably necessary to satisfy the emergency need (including federal, state and local taxes and penalties that are reasonably anticipated to result from the distribution). Any determination of the acceptance or denial of a request for an Unforeseeable Emergency payment shall be made by the Committee as soon as practicable after the Member's request is approved in accordance with rules applied in a uniform and nondiscriminatory manner. A payment under this Article 6 shall be made in a lump sum in cash to the Member and shall be charged against the Member's Post-2004 Accounts as of the Valuation Date coinciding with or immediately following the date of the payment.

ARTICLE VII

Death Benefits

7.1 Death Prior to Commencement of Payment. If a Member dies before distributions have commenced, the Member's Beneficiary shall be entitled to receive the full value of the Member's Post-2004 Accounts. The Member's Beneficiary shall be paid by default in annual installments over five (5) years with the first installment to be paid in the first January following the calendar year of death; provided, however, if the value of the Member's aggregate Post-2004 Accounts is \$50,000 or less, the Member's Beneficiary will be paid in a lump sum in the January following the calendar year of death.

7.2 Death After Commencement of Payment. If a Member dies after distributions have commenced, but prior to the complete payment of the Member's Post-2004 Accounts, the Member's Beneficiary shall be entitled to receive the entire unpaid vested portion of the Member's Post-2004 Accounts according to the Member's distribution in effect at the time of death.

7.3 Payment to Successor Beneficiary. If, subsequent to the death of a Member, the Member's Beneficiary dies while entitled to receive benefits under the Plan, the successor Beneficiary, if any, shall be entitled to receive benefits under the Plan. However, if no such successor Beneficiary is alive, the Member's benefits under the Plan shall be paid in accordance with the designation of the Beneficiary. If no such designation is in effect, then the remaining death benefits shall be paid to the Beneficiary's spouse, if any, and if the Beneficiary is not survived by a spouse, by the personal representative of the deceased Beneficiary's estate.

ARTICLE VIII **Payment of Benefits**

8.1 Distribution Events.

(a) Employee Deferral Accounts and Employer Match Accounts. During the applicable Enrollment Period in which a Member may elect to make Elective Deferrals for any Plan Year pursuant to Section 3.1(a), including the Member's initial deferral election and initial deferral elections for subsequent Plan Years, the Member may elect the manner in which amounts in his or her Employee Deferral Account and Employer Match Account attributable to each such Plan Year shall be paid. For each Plan Year for which a Member makes an initial deferral election pursuant to Section 3.1(a), a Member may elect to be paid from his or her Elective Deferral Account and Employer Match Account at the time and in one of the following forms designated below:

(i) in a lump sum in January of a specified calendar year (which is at least two (2) years following the Plan Year for which the election is made);

(ii) in annual installments (not to exceed fifteen (15) years) commencing in January of a specified calendar year (which is at least two (2) years following the Plan Year for which the election is made);

(iii) in a lump sum in January of the calendar year following the calendar year in which the Member's Separation from Service occurs;

(iv) in annual installments (not to exceed fifteen (15) years) commencing in January of the calendar year following the calendar year in which the Member's Separation from Service occurs;

(v) the earlier of (i) or (iii) above;

(vi) the earlier of (ii) or (iv) above;

(vii) the later of (i) or (iii) above; or

(viii) the later of (ii) or (iv) above.

(b) Non-elective Contribution Accounts . Non-elective Contributions shall be paid in the same manner as are Elective Deferrals for the same Plan Year in which both contribution types are credited to a Member's Account.

(c) Change in Time and Form of Payment elections . A Member making an initial deferral election pertaining to the timing and form of payment of amounts held in his or her Post-2004 Accounts with respect to any Plan Year may elect to change a payment commencement date previously selected for amounts deferred in such Plan Year if (i) such redeferral election does not take effect until twelve (12) months following the date on which the redeferral election is made; (ii) the first payment with respect to which the redeferral is made is deferred for at least five (5) years from the date the payment would otherwise have commenced; and (iii) in the instance of a redeferral of a payment to be made at a fixed time or pursuant to a fixed schedule, the redeferral election does not occur less than twelve (12) months before the date of the first scheduled payment. If the applicable conditions in the immediately preceding sentence are not satisfied, the redeferral election will not be given effect. If the redeferral election affects an election with alternative payment events or is modified to provide for multiple payment events, each of the requirements in clauses (i), (ii) and (iii) of the immediately preceding sentence must be satisfied in order for the redeferral election to take effect.

(d) General Payment Rules .

(i) Cash or Cash Equivalent Payments . All payments under the Plan shall be in cash or cash equivalents.

(ii) Default Time and Form of Payment Rule . If a Member fails to make a timely election pursuant to Section 8.1(a) for amounts so deferred with respect to any Plan Year, payment of amounts attributable to that Plan Year will be made in annual installments over five (5) years commencing in January of the later of the calendar year in which the Member's Separation from Service occurs or the calendar year in which the Member attains age 62.

(iii) Lump Sum Rule for Small Accounts . Notwithstanding anything to the contrary in this Article 8 (other than Section 8.1(d)(v)), if the aggregate value of the Member's Post-2004 Accounts is \$50,000 or less, the distribution of the Accounts shall be made in a lump sum in January of the calendar year following the calendar year in which the Member's Separation from Service occurs.

(iv) De Minimis Distributions . The Committee, in its discretion, may initiate a distribution in a lump sum of a Member's Post-2004 Accounts if the

aggregate amount credited thereto does not exceed, and has not exceeded for the immediately preceding two (2)-year period, the then applicable dollar limit under Section 402(g)(1)(B) of the Code and the distribution effects a termination and liquidation of the entirety of the Member's interest in the Plan and all similar plans (within the meaning of Treasury Regulations Section 1.409A-1(c)(2)), provided that the Committee's action is documented in writing no later than the date such distribution is made.

(v) Delay in Payment to Certain Members. Notwithstanding anything to the contrary in this Article 8, if a Member is a "specified employee" within the meaning of Section 409A of the Code at the date of his or her Separation from Service, any payments otherwise due from such Member's Post-2004 Accounts during the six-month period after the date of Separation from Service shall be deferred and such deferred amounts will be paid during the seventh month following such six-month anniversary.

(vi) Installment Payments. For purposes of this Section 8.1, annual installments means a series of amounts to be paid annually over a predetermined period of years in substantially equal periodic payments, except to the extent any increase in the amounts reflects reasonable earnings. Annual installments shall be treated as a single payment of purposes of Section 409A of the Code.

(vii) Pre-2005 Accounts. Pre-2005 Accounts shall be paid in accordance with Appendix A.

8.2 Accelerated Payouts in the Event of 409A Violations. Notwithstanding any other provision of the Plan to the contrary, the Committee shall cause each Employer to make payments hereunder before such payments are otherwise due if it determines that the provisions of the Plan fail to meet the requirements of Code Section 409A and the rules and regulations promulgated thereunder; provided, however, that such payment(s) may not exceed the amount required to be included in income as a result of such failure to comply the requirements of Code Section 409A and the rules and regulations promulgated thereunder and, to the extent permissible therein, any taxes, penalties, interest and costs attributable thereto.

8.3 Distributions During the Transition Period. Notwithstanding any other provision of the Plan to the contrary, the Committee may allow a Member to elect a form and time for the distribution of his or her Post-2004 Accounts different from the foregoing provisions of this Article 8 provided that: (a) the election is made on or before December 31, 2008; (b) the election satisfies the limitations on the nature of any such election as set forth in Section 3.02 of Revenue Procedure 2007-86, including the requirement that any such election shall only apply to amounts not otherwise payable in 2008 and shall not cause an amount to be paid in 2008 that would not otherwise be payable in 2008; and (c) any such Member's election is irrevocably made in writing on or before December 31, 2008.

8.4 Deduction Limitation on Benefit Payments. Notwithstanding any other provision of the Plan, if an Employer reasonably anticipates that the Employer's deduction with respect to

any distribution from this Plan would be limited or eliminated by application of Section 162(m) of the Code, then to the extent deemed necessary by the Employer to ensure that the entire amount of any distribution from this Plan is deductible, the Employer may delay payment of any amount that would otherwise be distributed from this Plan. Any amounts for which distribution is delayed pursuant to this Article shall continue to be credited with additional amounts in accordance with Section 4.4. The delayed amounts (and any amounts credited thereon) shall be distributed to the Member (or his or her Beneficiary) at the earliest date the Employer reasonably anticipates that the deduction of the payment of the amount will not be limited or eliminated by application of Section 162(m) of the Code.

8.5 Benefits Payable to Minors and Incompetents .

(a) Whenever any person entitled to payments under the Plan shall be a minor or under other legal disability or in the sole judgment of the Employer otherwise shall be unable to apply such payments to his or her own best interest and advantage (as in the case of illness, whether mental or physical or where the person not under legal disability is unable to preserve his or her estate for his or her own best interest), the Employer may in the exercise of its discretion direct all or any portion of such payments to be made in any one or more of the following ways unless claim shall have been made therefor by an existing and duly appointed guardian, tutor, conservator, committee or other duly appointed legal representative, in which event payment shall be made to such representative:

(i) directly to such person unless such person shall be an infant or shall have been legally adjudicated incompetent at the time of the payment;

(ii) to the spouse, child, parent or other blood relative to be expended on behalf of the person entitled or on behalf of those dependents as to whom the person entitled has the duty of support; or

(iii) to a recognized charity or governmental institution to be expended for the benefit of a person entitled or for the benefit of those dependents as to whom the person entitled has the duty of support.

(b) The decision of the Employer will, in each case, be final and binding upon all persons and the Employer shall not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power herein conferred upon the Employer shall operate as a complete discharge of the obligation of the Employer.

ARTICLE IX
Administration of the Plan

9.1 Administrative Committee . The Board of Directors may remove members from or add members to the Committee at any time, within its discretion, and may fill vacancies on the Committee. An individual member of the Committee may not participate in any decision exclusively affecting his or her own participation in the Plan. The Committee shall select one of its members as Chairman, and shall hold meetings at such times and places as it may determine. Acts

of a majority of the Committee at which a quorum is present, or acts reduced to or approved in writing by a majority of the members of the Committee, shall be valid acts of the Committee. The Committee shall have the sole authority, in its absolute discretion, to adopt, amend and rescind such rules and regulations as, in its opinion, may be advisable in the administration of the Plan; and to construe and interpret the Plan, the rules and regulations, and to make all other determinations deemed necessary or advisable for the administration of the Plan. All decisions, determinations, and interpretations of the Committee shall be binding on all Members. The Committee may employ such legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any such counsel or consultant and any computation received for any such consultant or agent. Expenses incurred by the Board of Directors or the Committee in the engagement of such counsel, consultant or agent shall be paid by the Employer. No member or former member of the Committee or of the Board of Directors shall be liable for any action or determination made in good faith with respect to the Plan or any awards granted hereunder.

9.2 Inalienability of Benefits. The right of any Member or Beneficiary to any benefit or payment under the Plan shall not be subject to alienation or assignment, and to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. In the event a Member or Beneficiary who is receiving or is entitled to receive benefits under the Plan attempts to assign, transfer or dispose of such right, or if an attempt is made to subject said right to such process, such assignment, transfer or disposition shall be null and void.

9.3 Costs of the Plan. The costs of maintaining records and executing transfers under the Plan shall be paid by Tyson Foods, Inc., unless the Committee elects to apply such costs as a charge against Post-2004 Accounts.

9.4 Indemnification. Tyson Foods, Inc. shall indemnify and hold harmless any officer, employee, agent, or representative who incurs damage or loss, including the expense of defense thereof, in connection with the performance of the duties specified herein, other than losses resulting from any such person's fraud or willful misconduct.

9.5 Action by Tyson Foods, Inc. or Another Employer. Any action to be taken by Tyson Foods, Inc. or another Employer shall be taken by resolution or written direction duly adopted by its board of directors or appropriate governing body, as the case may be; provided, however, that by such resolution or written direction, the board of directors or appropriate governing body, as the case may be, may delegate to any officer or other appropriate person of an Employer the authority to take any such actions as may be specified in such resolution or written direction.

ARTICLE X

Amendment and Termination of the Plan

10.1 Amendment and Termination. Tyson Foods, Inc. or any successor thereto reserves the right by action of the Board of Directors or its delegatee at any time to modify or amend or terminate the Plan. No such modifications or amendments shall have the effect of

retroactively changing or depriving Members or Beneficiaries of benefits already accrued under the Plan; provided, however, that Tyson Foods, Inc. (or its successor) shall have the right to amend the Plan in any respect to comply with the provisions of Section 409A of the Code and any guidance promulgated thereunder so as not to trigger any unintended tax consequences prior to the distribution of benefits provided herein. Notwithstanding anything contained in the Plan to the contrary, upon termination of the Plan, each Member's Post-2004 Accounts shall be paid in due course in accordance with Articles VII and VIII, unless Tyson Foods, Inc. (or its successor) elects to have all Post-2004 Accounts paid in a lump sum after the Plan's termination but only if Tyson Foods, Inc. (or its successor) determines that such payment of Post-2004 Accounts will not constitute an impermissible acceleration of payments under one of the exceptions provided in Treasury Regulations Section 1.409A-3(j)(4)(ix), or any successor guidance. In such event, payment shall be made at the earliest date permitted under such guidance on account of the event. No Employer other than Tyson Foods, Inc. (or its successor) shall have the right to so modify, amend or terminate the Plan.

10.2 Termination by Another Employer. Each Employer (other than Tyson Foods, Inc.) shall have the right to terminate its participation in the Plan by resolution of its board of directors or other appropriate governing body and notice in writing to Tyson Foods, Inc. Any termination by another such Employer shall not be a termination as to any other Employer. Any such termination shall not trigger payment of any affected Member's Account unless Tyson Foods, Inc. (or its successor) affirmatively determines otherwise by action of its Board of Directors and, in such event, any affect on payments shall be subject to the limitations under Section 10.1.

10.3 Termination by Primary Sponsor. If the Plan is terminated by Tyson Foods, Inc. (or its successor) it shall terminate as to all Employers.

ARTICLE XI **Adoption of Plan by Affiliates**

Any affiliate or other business entity related to Tyson Foods, Inc. by function or operation, if the affiliate or business entity is authorized to do so by written direction adopted by the Board of Directors of Tyson Foods, Inc. may adopt the Plan by action of the board of directors or other appropriate governing body of such affiliate or business entity. Any adoption shall be evidenced by certified copies of the resolutions of the foregoing board of directors or governing body indicating the adoption by the adopting affiliate or business entity. The resolution shall state and define the effective date of the adoption of the Plan by that Employer.

ARTICLE XII **Miscellaneous Provisions**

12.1 No Contract of Employment Intended. The granting of any right to an Employee, pursuant to this Plan, shall not constitute an agreement or understanding, express or implied, on the part of Tyson Foods, Inc. or any affiliate, to employ such employee for any specified period.

12.2 Claims Review Procedure.

(a) Notice of Denial. If a Member or a Beneficiary is denied a claim for benefits under the Plan, the Committee shall provide to the claimant written notice of the denial within ninety (90) days after the Committee receives the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall the extension exceed a period of ninety (90) days from the end of such initial period. Any extension notice shall indicate the special circumstances requiring the extension of time, the date by which the Committee expects to render the final decision, the standards on which entitlement to benefits are based, the unresolved issues that prevent a decision on the claim and the additional information needed to resolve those issues.

(b) Contents of Notice of Denial. If a Member or Beneficiary is denied a claim for benefits under a Plan, the Committee shall provide to such claimant written notice of the denial which shall set forth:

(i) the specific reasons for the denial;

(ii) specific references to the pertinent provisions of the Plan on which the denial is based;

(iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(iv) an explanation of the Plan's claim review procedures, and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Sections 502(a) of ERISA following an adverse benefit determination on review.

(c) Right to Review. After receiving written notice of the denial of a claim, a claimant or his or her representative shall be entitled to:

(i) request a full and fair review of the denial of the claim by written application to the Committee;

(ii) request, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim;

(iii) submit written comments, documents, records, and other information relating to the denied claim to the Committee; and

(iv) a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without

regard to whether such information was submitted or considered in the initial benefit determination.

(d) Application for Review. If a claimant wishes a review of the decision denying his or her claim to benefits under the Plan, he or she must submit the written application to the Committee within sixty (60) days after receiving written notice of the denial.

(e) Hearing. Upon receiving such written application for review, the Committee may schedule a hearing for purposes of reviewing the claimant's claim, which hearing shall take place not more than thirty (30) days from the date on which the Committee received such written application for review.

(f) Notice of Hearing. At least ten (10) days prior to the scheduled hearing, the claimant and his or her representative designated in writing by him or her, if any, shall receive written notice of the date, time, and place of such scheduled hearing. The claimant or his or her representative, if any, may request that the hearing be rescheduled, for his or her convenience, on another reasonable date or at another reasonable time or place.

(g) Counsel. All claimants requesting a review of the decision denying their claim for benefits may employ counsel for purposes of the hearing.

(h) Decision on Review. No later than sixty (60) days following the receipt of the written application for review, the Committee shall submit its decision on the review in writing to the claimant involved and to his or her representative, if any, unless the Committee determines that special circumstances (such as the need to hold a hearing) require an extension of time, to a day no later than one hundred twenty (120) days after the date of receipt of the written application for review. If the Committee determines that the extension of time is required, the Committee shall furnish to the claimant written notice of the extension before the expiration of the initial sixty (60) day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render its decision on review. In the case of a decision adverse to the claimant, the Committee shall provide to the claimant written notice of the denial which shall include:

- (i) the specific reasons for the decision;
- (ii) specific references to the pertinent provisions of the Plan on which the decision is based;
- (iii) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits; and

(iv) an explanation of the Plan's claim review procedures, and the time limits applicable to such procedures, including a statement of the claimant's right to bring an action under Section 502(a) of ERISA following the denial of the claim upon review.

12.3 Governing Law. The construction, validity, and operation of this Plan shall be governed by the laws of the State of Delaware, to the extent not preempted by applicable federal law.

12.4 Rules of Construction. Throughout this Plan, the masculine includes the feminine, and the singular and the plural, and vice versa, where applicable.

12.5 Payment provided under the Plan. All payments provided under the Plan shall be paid from the general assets of the Employer and no separate fund shall be established to secure payment. Notwithstanding the foregoing, the Employer may establish a grantor trust to assist it and any affiliate in funding Plan obligations, and any payment made to a Member or a Beneficiary from such trust shall relieve the Employer and affiliate from any further obligations under the Plan only to the extent of such payment.

12.6 Withholding.

(a) From Non-Plan Sources. For each Plan Year in which a Member who is an Employee has amounts credited to his or her Post-2004 Accounts under the Plan, the Employer shall, to the extent applicable, withhold from that portion of the Member's Compensation that is not being deferred in a manner determined by the Employer, the Member's share, if any, of FICA and other employment taxes on such deferred compensation that the Employer is required to withhold. If insufficient cash wages are available or if the Member so desires, the Member may remit payment in cash for the withholding amounts.

(b) From Accounts. Notwithstanding any other provision in this Plan to the contrary, payments under the Plan may be accelerated to pay, where applicable, the FICA tax imposed under Sections 3101, 3121(a), and 3121(v)(2) of the Code and any state, local, and foreign tax obligations (the "Tax Obligations") that may be imposed on amounts deferred pursuant to this Plan prior to the time such amounts are paid or made available to the Member and to pay the income tax at source on wages imposed under Section 3401 of the Code or the corresponding withholding provisions of applicable state, local, or foreign tax laws as a result of an accelerated payment of the Tax Obligations (the "Income Tax Obligations"). Accelerated payments pursuant to this Section 12.6(b) shall not exceed the amount of the Tax Obligations and Income Tax Obligations and shall be made in the form of a payment directly to the applicable taxing authorities pursuant to the withholding provisions of applicable law.

12.7 Agents. In the administration of the Plan, the Committee may employ agents and delegate to them such administrative duties as it sees fit, (including acting through a duly appointed representative).

12.8 Annual Statement . The Committee shall provide or otherwise make available to each Member, within one hundred twenty (120) days after the end of each Plan Year, a statement setting forth the benefits to be distributed under the Plan.

12.9 Binding Effect . The Plan shall be binding upon the successors and assigns of each Employer.

12.10 Severability . In case any provision of this Plan shall be invalid for any reason, said invalidity shall not affect the remaining parts hereof, but, to the extent practicable, this Plan shall be construed and enforced as if such invalid provision had never been inserted herein.

12.11 Several, Not Joint, Obligations . The obligations of each Employer under the Plan represent the obligations of that Employer and are not the obligations of any other Employer.

12.12 Status of Plan . The Plan is intended to be a plan that is not qualified within the meaning of Section 401(a) of the Code and is unfunded and, with respect to Members who are Employees, is maintained by one or more Employers primarily for the purpose of providing deferred compensation for "a select group of management or highly compensated employees" within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. The Plan shall be administered and interpreted (i) in a manner consistent with that intent, and (ii) in accordance with Section 409A of the Code and related Treasury guidance and regulations.

12.13 Unsecured General Creditor . Members and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of an Employer. For purposes of the payment of benefits under this Plan, any and all of an Employer's assets shall be, and remain, the general, unpledged unrestricted assets of the Employer. An Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

12.14 Integrated Plan . This Plan constitutes the final and complete expression of agreement among the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, Tyson Foods, Inc. has caused this indenture to be executed as of the date set forth below.

TYSON FOODS, INC.

By: /s/ Dennis Leatherby

Title: EVP and Chief Financial Officer

Date: 11-14-08

APPENDIX A

The distribution of Pre-2005 Accounts shall be administered solely in accordance with the provisions of this Appendix A, as follows:

1. Pre-2005 Accounts. Amounts credited to a Member's Pre-2005 Accounts shall be distributed to the Member or his or her Beneficiaries in such form and at such times as set forth below:

(a) Normal Distribution Rules. The following distribution rules apply to all Members, other than to the extent provided in 1(b) below.

(i) If the aggregate sum of a Member's Pre-2005 Accounts total \$50,000 or less as of the first Valuation Date immediately following the Member's termination of service for any reason, the Pre-2005 Accounts shall be distributed to the Member in cash in a lump sum as soon as practicable following the termination of service.

(ii) If the aggregate sum of a Member's Pre-2005 Accounts total more than \$50,000 as of the first Valuation Date immediately following the Member's termination of service for any reason, the Pre-2005 Accounts will be paid as follows:

(1) unless the Member timely elects another form of payment pursuant to Section 1(a)(ii)(2) below, the Member's Pre-2005 Accounts shall be paid in annual installments over ten (10) years, with the first installment to be paid in January immediately following the later of the date the Member attains age 62 or terminates service; provided, however, if the Pre-2005 Accounts become payable by reason of the Member's death prior to age 62, the Member's Pre-2005 Accounts shall be paid in annual installments over ten (10) years, with the first installment to be paid in January following the calendar year in which the Member would have attained age 62. If the Member's death occurs on or after attaining age 62 during a calendar year, the first installment shall be paid in January of the immediately following calendar year if the death occurred on or before May 31 and shall be paid in January of the second calendar year immediately following the Member's death if the Member died on or after June 1; or

(2) in lieu of the default payment method described in Section 1(a)(ii)(1) above, a Member or Beneficiary who makes a timely election may elect one of the following alternate methods of payment:

(a) biannual installment payments extending over a period of not more than fifteen (15) years, with the first installment commencing as of any January within the fifteen (15)-year period that commences with the later of the calendar year in which the

Member attains age 62 or terminates service. Subject to the foregoing, the Member may designate the first installment date so long as all installment payments are made within the fifteen (15)-year period described by the first clause of this Section 1(a)(ii)(2)(a).

(b) annual installment payments extending over a period of not more than fifteen (15) years, with the first installment commencing as of any January within the fifteen (15)-year period that commences with the later of the calendar year in which the Member attains age 62 or terminates service. Subject to the foregoing, the Member may designate the first installment date so long as all installment payments are made within the fifteen (15)-year period described by the first clause of this Section 1(a)(ii)(2)(b).

(c) a lump sum payment of all or any portion of a Member's Accounts, whether or not the Member is then in the service of the Employer, with the remainder payable under any provision of this Section 1, including this Section 1(a)(ii)(2)(c).

For purposes of this Section 1(a)(ii)(2), a Member will be deemed to have made a timely election only if the Member delivers an election to the Committee by June 30 of the Plan Year prior to the Plan Year the first payment would otherwise be made to the Member pursuant to Section 1(a)(ii)(1) and a Beneficiary will be deemed to have made a timely election only if the Beneficiary delivers an election to the Committee at least one year prior to the date the first payment would otherwise be made to the Beneficiary pursuant to Section 1(a)(ii)(1). The delivery of payment elections shall be subject to such additional rules and procedures as the Committee may prescribe.

For purposes of this Section 1(a)(ii), the amount of any installment payment shall be determined by multiplying the Pre-2005 Account balance determined as of the date for processing the distribution by a fraction, the numerator of which is one and the denominator of which is the number of remaining installment payments to be made to the Member.

(iii) A Member or Beneficiary, whether or not the Member is then in the service of the Employer, may petition the Committee for the immediate payout of all or a portion of the Member's Pre-2005 Accounts in a lump sum, which petition shall be granted or rejected at the sole discretion of the Committee. In ruling upon any such petition, the Committee shall consider: (x) any circumstances of financial hardship demonstrated by the Member or Beneficiary; (y) any benefit that may be derived by the Employer by making the distribution (other than the corresponding deduction that the Employer could claim by making the distribution); or (z) any combination of such circumstances. The Committee shall have the sole and absolute discretion to grant or deny any such petition consistent with the guidelines set forth herein.

(iv) If, as of any Valuation Date, a Member's Pre-2005 Accounts total \$5,000 or less and the Member has not had any Elective Deferrals credited to his or her Account for at least a two (2)-year period, the Committee may elect to effect an immediate distribution of the Member's Pre-2005 Accounts in cash in a lump sum as soon as practicable following such Valuation Date.

(b) Certain Grandfathered Distribution Rules Effective Prior to January 1, 2004. Distribution of Pre-2005 Accounts in pay status as of January 1, 2003 or that become payable at any time during the 2003 calendar year will continue during the 2003 calendar year in accordance with the distribution rules in effect under the provisions of the Plan in effect immediately prior to January 1, 2003 or, if the Member was previously a participant in the Retirement Income Plan of IBP, inc., pursuant to the rules in effect under that plan immediately prior to January 1, 2003 (the "Transitional Grandfathered Rules"). Notwithstanding the foregoing, the Committee, in its sole discretion, may extend the application of the Transitional Grandfathered Rules to the continued payment of the Pre-2005 Accounts of any Member who is otherwise subject to the provisions of this Section 1(b). In addition, if the aggregate sum of a Member's Pre-2005 Accounts total \$50,000 or less as of the first Valuation Date immediately following the Member's termination of service for any reason, the Pre-2005 Accounts shall be distributed to the Member in cash in a lump sum as soon as practicable following the termination of service notwithstanding any provisions of the Transitional Grandfathered Rules to the contrary.

TYSON FOODS, INC.
2000 STOCK INCENTIVE PLAN
(As Amended and Restated Effective November 19, 2004)

TYSON FOODS, INC.
2000 STOCK INCENTIVE PLAN
(As Amended and Restated Effective November 19, 2004)

TABLE OF CONTENTS

	<u>Page</u>
<u>SECTION 1 - DEFINITIONS</u>	<u>1</u>
<u>1.1 Definitions</u>	<u>1</u>
<u>SECTION 2 - THE STOCK INCENTIVE PLAN</u>	<u>5</u>
<u>2.1 Purpose of the Plan</u>	<u>5</u>
<u>2.2 Stock Subject to the Plan</u>	<u>5</u>
<u>2.3 Administration of the Plan</u>	<u>6</u>
<u>2.4 Eligibility and Limits</u>	<u>6</u>
<u>SECTION 3 - TERMS OF STOCK INCENTIVES</u>	<u>6</u>
<u>3.1 Terms and Conditions of All Stock Incentives</u>	<u>6</u>
<u>3.2 Terms and Conditions of Options</u>	<u>7</u>
<u>(a) Option Price</u>	<u>8</u>
<u>(b) Option Term</u>	<u>8</u>
<u>(c) Payment</u>	<u>8</u>
<u>(d) Conditions to the Exercise of an Option</u>	<u>8</u>
<u>(e) Termination of Incentive Stock Option</u>	<u>9</u>
<u>(f) Special Provisions for Certain Substitute Options</u>	<u>9</u>
<u>3.3 Terms and Conditions of Stock Appreciation Rights</u>	<u>9</u>
<u>(a) Settlement</u>	<u>9</u>
<u>(b) Conditions to Exercise</u>	<u>9</u>
<u>3.4 Terms and Conditions of Stock Awards</u>	<u>10</u>
<u>3.5 Terms and Conditions of Dividend Equivalent Rights</u>	<u>10</u>
<u>(a) Payment</u>	<u>10</u>
<u>(b) Conditions to Payment</u>	<u>10</u>
<u>3.6 Terms and Conditions of Performance Unit Awards</u>	<u>10</u>
<u>(a) Payment</u>	<u>10</u>
<u>(b) Conditions to Payment</u>	<u>11</u>
<u>3.7 Terms and Conditions of Phantom Shares</u>	<u>11</u>
<u>(a) Payment</u>	<u>11</u>
<u>(b) Conditions to Payment</u>	<u>11</u>
<u>3.8 Treatment of Awards Upon Termination of Employment</u>	<u>11</u>
<u>SECTION 4 - RESTRICTIONS ON STOCK</u>	<u>12</u>
<u>4.1 Escrow of Shares</u>	<u>12</u>
<u>4.2 Restrictions on Transfer</u>	<u>12</u>
<u>SECTION 5 - GENERAL PROVISIONS</u>	<u>12</u>
<u>5.1 Withholding</u>	<u>12</u>
<u>5.2 Changes in Capitalization; Merger; Liquidation</u>	<u>13</u>
<u>5.3 Cash Awards</u>	<u>14</u>
<u>5.4 Compliance with Code</u>	<u>14</u>

<u>5.5 Right to Terminate Employment or Service Relationship</u>	<u>14</u>
<u>5.6 Non-alienation of Benefits</u>	<u>14</u>
<u>5.7 Restrictions on Delivery and Sale of Shares; Legends</u>	<u>14</u>
<u>5.8 Listing and Legal Compliance</u>	<u>15</u>
<u>5.9 Termination and Amendment of the Plan</u>	<u>15</u>
<u>5.10 Stockholder Approval</u>	<u>15</u>
<u>5.11 Choice of Law</u>	<u>15</u>

TYSON FOODS, INC.
2000 STOCK INCENTIVE PLAN
(As Amended and Restated Effective November 19, 2004)

SECTION 1 - DEFINITIONS

1.1 Definitions. Whenever used herein, the masculine pronoun will be deemed to include the feminine, and the singular to include the plural, unless the context clearly indicates otherwise, and the following capitalized words and phrases are used herein with the meaning thereafter ascribed:

(a) “Affiliate” means (i) any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if, at the time of granting of the Option, each of the corporations (other than the Company) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain, or (ii) any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, at the time of granting of the Option, each of the corporations, other than the last corporation in the unbroken chain, owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(b) “Board of Directors” means the board of directors of the Company.

(c) “Change in Control” means any one of the following events which may occur after the date hereof:

(1) the acquisition by any individual, entity or “group,” within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act (a “Person”), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of voting securities of the Company where such acquisition causes any such Person to own twenty-five percent (25%) or more of the combined voting power of the then outstanding voting securities then entitled to vote generally in the election of directors (the “Outstanding Voting Securities”); provided, however, that for purposes of this Section, the following shall not be deemed to result in a Change in Control, (i) any acquisition directly from the Company, unless such a Person subsequently acquires additional shares of Outstanding Voting Securities other than from the Company, in which case any such subsequent acquisition shall be deemed to be a Change in Control; or (ii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(2) a merger, consolidation, share exchange, combination, reorganization or like transaction involving the Company in which the stockholders of the Company immediately prior to such transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding capital stock of the Company or its successor immediately after such transaction;

(3) the sale or transfer (other than as security for the Company’s obligations) of more than fifty percent (50%) of the assets of the Company in any one transaction

or a series of related transactions occurring within a one (1) year period in which the Company, any corporation controlled by the Company or the stockholders of the Company immediately prior to the transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding equity securities of the acquiror immediately after the transaction;

(4) the sale or transfer of more than fifty percent (50%) of the value or voting power of the issued and outstanding capital stock of the Company by the holders thereof in any one transaction or a series of related transactions occurring within a one (1) year period in which the Company, any corporation controlled by the Company or the stockholders of the Company immediately prior to the transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding equity securities of the acquiror immediately after the transaction;

(5) within any twelve-month period the persons who were directors of the Company immediately before the beginning of such twelve-month period (the "Incumbent Directors") shall cease to constitute at least a majority of the Board of Directors; provided that no director whose initial assumption of office is in connection with an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) relating to the election of directors of the Company shall be deemed to be an Incumbent Director; or

(6) the dissolution or liquidation of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Committee" means the committee appointed by the Board of Directors to administer the Plan. The Board of Directors shall consider the advisability of whether the members of the Committee shall consist solely of at least two members of the Board of Directors who are both "outside directors" as defined in Treas. Reg. § 1.162-27(e) as promulgated by the Internal Revenue Service and "non-employee directors" as defined in Rule 16b-3(b)(3) as promulgated under the Exchange Act.

(f) "Company" means Tyson Foods, Inc., a Delaware corporation.

(g) "Disability" has the same meaning as provided in the long-term disability plan or policy maintained or, if applicable, most recently maintained, by the Company or, if applicable, any Affiliate of the Company for the Participant. If no long-term disability plan or policy was ever maintained on behalf of the Participant or, if the determination of Disability relates to an incentive stock option, Disability means that condition described in Code Section 22(e) (3), as amended from time to time. In the event of a dispute, the determination of Disability will be made by the Committee and will be supported by advice of a physician competent in the area to which such Disability relates.

(h) "Dividend Equivalent Rights" means certain rights to receive cash payments as described in Section 3.5.

- (i) “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.
- (j) “Fair Market Value” with regard to a date means the closing price at which Stock shall have been sold on that date or the last trading date prior to that date as reported by the New York Stock Exchange and published in The Wall Street Journal.
- (k) “Incentive Stock Option” means an incentive stock option contemplated by the provisions of Code Section 422 or any successor thereto.
- (l) “Nonqualified Stock Option” means an option that is not designated as, or otherwise intended to be, an Incentive Stock Option.
- (m) “Option” means a Nonqualified Stock Option or an Incentive Stock Option.
- (n) “Over 10% Owner” means an individual who at the time an Incentive Stock Option is granted owns Company stock possessing more than 10% of the total combined voting power of the Company or one of its Subsidiaries, determined by applying the attribution rules of Code Section 424(d).
- (o) “Participant” means an individual who receives a Stock Incentive hereunder.
- (p) “Performance Goals” means the measurable performance objectives, if any, established by the Committee for a Performance Period that are to be achieved with respect to a Stock Incentive granted to a Participant under the Plan. Performance Goals may be described in terms of Company-wide objectives or in terms of objectives that are related to performance of the division, Affiliate, department or function within the Company or an Affiliate in which the Participant receiving the Stock Incentive is employed or on which the Participant’s efforts have the most influence. The achievement of the Performance Goals established by the Committee for any Performance Period will be determined without regard to the effect on such Performance Goals of any acquisition or disposition by the Company of a trade or business, or of substantially all of the assets of a trade or business, during the Performance Period and without regard to any change in accounting standards by the Financial Accounting Standards Board or any successor entity. The Performance Goals established by the Committee for any Performance Period under the Plan will consist of one or more of the following:

- (1) earnings per share and/or growth in earnings per share in relation to target objectives, excluding the effect of extraordinary or nonrecurring items;
- (2) operating cash flow and/or growth in operating cash flow in relation to target objectives;
- (3) cash available in relation to target objectives;
- (4) net income and/or growth in net income in relation to target objectives, excluding the effect of extraordinary or nonrecurring items;

- objectives;
- (5) revenue and/or growth in revenue in relation to target objectives;
 - (6) total shareholder return (measured as the total of the appreciation of, and dividends declared on, the Stock) in relation to target objectives;
 - (7) return on invested capital in relation to target objectives;
 - (8) return on shareholder equity in relation to target objectives;
 - (9) return on assets in relation to target objectives;
 - (10) return on common book equity in relation to target objectives;
 - (11) operating income in relation to target objectives;
 - (12) EBIT, EBITDA or EBITDAR in relation to target objectives; or
 - (13) Company stock price performance as compared against a peer group of companies selected by the Committee; or
 - (14) any combination of the foregoing.

If the Committee determines that, as a result of a change in the business, operations, corporate structure or capital structure of the Company, or the manner in which the Company conducts its business, or any other events or circumstances, the Performance Goals are no longer suitable, the Committee may in its discretion modify such Performance Goals or the related minimum acceptable level of achievement, in whole or in part, with respect to a period as the Committee deems appropriate and equitable, except where such action would result in the loss of the otherwise available exemption of the Stock Incentive under Section 162(m) of the Code. In such case, the Committee will not make any modification of the Performance Goals or minimum acceptable level of achievement.

- (q) “Performance Period” means, with respect to a Stock Incentive, a period of time within which the Performance Goals relating to such Stock Incentive are to be measured. The Performance Period will be established by the Committee at the time the Stock Incentive is granted.
- (r) “Performance Unit Award” refers to a performance unit award as described in Section 3.6.
- (s) “Phantom Shares” refers to the rights described in Section 3.7.
- (t) “Plan” means the Tyson Foods, Inc. 2000 Stock Incentive Plan.
- (u) “Stock” means the Company’s Class A \$.10 par value common stock.
- (v) “Stock Appreciation Right” means a stock appreciation right described in Section 3.3.

(w) “ Stock Award ” means a stock award described in Section 3.4.

(x) “ Stock Incentive Agreement ” means an agreement between the Company and a Participant or other documentation evidencing an award of a Stock Incentive.

(y) “ Stock Incentive Program ” means a written program established by the Committee, pursuant to which Stock Incentives are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

(z) “ Stock Incentives ” means, collectively, Dividend Equivalent Rights, Options, Performance Unit Awards, Phantom Shares, Stock Appreciation Rights and Stock Awards.

(aa) “ Subsidiary ” means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, with respect to incentive stock options, at the time of the granting of the Option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

(bb) “ Termination of Employment ” means the termination of the employee-employer relationship between a Participant and the Company and its Affiliates, regardless of whether severance or similar payments are made to the Participant for any reason, including, but not by way of limitation, a termination by resignation, discharge, death, Disability or retirement. The Committee will, in its absolute discretion, determine the effect of all matters and questions relating to a Termination of Employment, including, but not by way of limitation, the question of whether a leave of absence constitutes a Termination of Employment.

SECTION 2 - THE STOCK INCENTIVE PLAN

2.1 Purpose of the Plan. The Plan is intended to (a) provide incentive to officers, employees, directors, consultants and other service providers of the Company and its Affiliates to stimulate their efforts toward the continued success of the Company and to operate and manage the business in a manner that will provide for the long-term growth and profitability of the Company; (b) encourage stock ownership by officers, employees, directors, consultants and other service providers by providing them with a means to acquire a proprietary interest in the Company, acquire shares of Stock, or to receive compensation which is based upon appreciation in the value of Stock; and (c) provide a means of obtaining, rewarding and retaining such key personnel.

2.2 Stock Subject to the Plan. Subject to adjustment in accordance with Section 5.2, 40,660,000 shares of Stock (the “Maximum Plan Shares”) are hereby reserved exclusively for issuance pursuant to Stock Incentives. At no time may the Company have outstanding under the Plan Stock Incentives and shares of Stock issued in respect of Stock Incentives under the Plan in excess of the Maximum Plan Shares. The shares of Stock attributable to the nonvested, unpaid,

unexercised, unconverted or otherwise unsettled portion of any Stock Incentive that is forfeited or cancelled or expires or terminates for any reason without becoming vested, paid, exercised, converted or otherwise settled in full will again be available for purposes of the Plan.

2.3 Administration of the Plan. The Plan is administered by the Committee. The Committee has full authority in its discretion to determine the officers, employees, directors, consultants and service providers of the Company or its Affiliates to whom Stock Incentives will be granted and the terms and provisions of Stock Incentives, subject to the Plan. Subject to the provisions of the Plan, the Committee has full and conclusive authority to interpret the Plan; to prescribe, amend and rescind rules and regulations relating to the Plan; to determine the terms and provisions of the respective Stock Incentive Agreements and to make all other determinations necessary or advisable for the proper administration of the Plan. The Committee's determinations under the Plan need not be uniform and may be made by it selectively among persons who receive, or are eligible to receive, awards under the Plan (whether or not such persons are similarly situated). The Committee's decisions are final and binding on all Participants.

2.4 Eligibility and Limits. Stock Incentives may be granted only to officers, employees, directors, consultants and other service providers of the Company, or any Affiliate of the Company; provided, however, that an Incentive Stock Option may only be granted to an employee of the Company or any Subsidiary. In the case of Incentive Stock Options, the aggregate Fair Market Value (determined as at the date an Incentive Stock Option is granted) of Stock with respect to which stock options intended to meet the requirements of Code Section 422 become exercisable for the first time by an individual during any calendar year under all plans of the Company and its Subsidiaries may not exceed \$100,000; provided further, that if the limitation is exceeded, the Incentive Stock Option (s) which cause the limitation to be exceeded will be treated as Nonqualified Stock Option(s).

SECTION 3- TERMS OF STOCK INCENTIVES

3.1 Terms and Conditions of All Stock Incentives

(a) The number of shares of Stock as to which a Stock Incentive may be granted will be determined by the Committee in its sole discretion, subject to the provisions of Section 2.2 as to the total number of shares available for grants under the Plan and subject to the limits on Options, Stock Appreciation Rights and other Stock Incentives as described in the following sentence. To the extent required under Section 162(m) of the Code and the regulations thereunder for compensation to be treated as qualified performance-based compensation, the maximum number of shares of Stock with respect to which (1) Options, (2) Stock Appreciation Rights and (3) other Stock Incentives (to the extent they are granted with the intent that they qualify as performance-based compensation under Section 162(m) of the Code) may be granted during any calendar year to any employee may not exceed 1,000,000, subject to adjustment in accordance with Section 5.2. In applying this limitation, if an Option or Stock Appreciation Right, or any portion thereof, granted to an employee is cancelled or repriced for any reason, then the shares of Stock attributable to such cancellation or repricing either shall continue to be

counted as an outstanding grant or shall be counted as a new grant of shares of Stock, as the case may be, against the affected employee's 1,000,000 share limit for the appropriate calendar year.

(b) Each Stock Incentive will either be evidenced by a Stock Incentive Agreement in such form and containing such terms, conditions and restrictions as the Committee may determine to be appropriate, including without limitation, Performance Goals that must be achieved as a condition to vesting or payment of the Stock Incentive, or be made subject to the terms of a Stock Incentive Program, containing such terms, conditions and restrictions as the Committee may determine to be appropriate, including without limitation, Performance Goals that must be achieved as a condition to vesting or payment of the Stock Incentive. Each Stock Incentive Agreement or Stock Incentive Program is subject to the terms of the Plan and any provisions contained in the Stock Incentive Agreement or Stock Incentive Program that are inconsistent with the Plan are null and void.

(c) The date a Stock Incentive is granted will be the date on which the Committee has approved the terms and conditions of the Stock Incentive and has determined the recipient of the Stock Incentive and the number of shares covered by the Stock Incentive, and has taken all such other actions necessary to complete the grant of the Stock Incentive.

(d) Any Stock Incentive may be granted in connection with all or any portion of a previously or contemporaneously granted Stock Incentive. Exercise or vesting of a Stock Incentive granted in connection with another Stock Incentive may result in a pro rata surrender or cancellation of any related Stock Incentive, as specified in the applicable Stock Incentive Agreement or Stock Incentive Program.

(e) Unless otherwise permitted by the Committee, Stock Incentives are not transferable or assignable except by will or by the laws of descent and distribution and are exercisable, during the Participant's lifetime, only by the Participant; or in the event of the Disability of the Participant, by the legal representative of the Participant; or in the event of death of the Participant, by the legal representative of the Participant's estate or if no legal representative has been appointed, by the successor in interest determined under the Participant's will. Notwithstanding the foregoing, the Committee shall not permit Incentive Stock Options to be transferred or assigned beyond the limitations set forth in this Section 3.1(e).

3.2 Terms and Conditions of Options. Each Option granted under the Plan must be evidenced by a Stock Incentive Agreement. At the time any Option is granted, the Committee will determine whether the Option is to be an Incentive Stock Option described in Code Section 422 or a Nonqualified Stock Option, and the Option must be clearly identified as to its status as an Incentive Stock Option or a Nonqualified Stock Option. Incentive Stock Options may only be granted to employees of the Company or any Subsidiary. At the time any Incentive Stock Option granted under the Plan is exercised, the Company will be entitled to legend the certificates representing the shares of Stock purchased pursuant to the Option to clearly identify them as representing the shares purchased upon the exercise of an Incentive Stock Option. An Incentive Stock Option may only be granted within ten (10) years from the earlier of the date the Plan is adopted or approved by the Company's stockholders.

(a) Option Price. Subject to adjustment in accordance with Section 5.2 and the other provisions of this Section 3.2, the exercise price (the "Exercise Price") per share of Stock purchasable under any Option must be as set forth in the applicable Stock Incentive Agreement, but in no event may it be less than the Fair Market Value on the date the Option is granted with respect to an Incentive Stock Option. With respect to each grant of an Incentive Stock Option to a Participant who is an Over 10% Owner, the Exercise Price may not be less than 110% of the Fair Market Value on the date the Option is granted.

(b) Option Term. Any Incentive Stock Option granted to a Participant who is not an Over 10% Owner is not exercisable after the expiration of ten (10) years after the date the Option is granted. Any Incentive Stock Option granted to an Over 10% Owner is not exercisable after the expiration of five (5) years after the date the Option is granted. The term of any Nonqualified Stock Option must be as specified in the applicable Stock Incentive Agreement.

(c) Payment. Payment for all shares of Stock purchased pursuant to the exercise of an Option will be made in any form or manner authorized by the Committee in the Stock Incentive Agreement or by amendment thereto, including, but not limited to, cash or, if the Stock Incentive Agreement provides:

(1) by delivery to the Company of a number of shares of Stock which have been owned by the holder for at least six (6) months prior to the date of exercise having an aggregate Fair Market Value of not less than the product of the Exercise Price multiplied by the number of shares the Participant intends to purchase upon exercise of the Option on the date of delivery;

(2) in a cashless exercise through a broker; or

(3) by having a number of shares of Stock withheld, the Fair Market Value of which as of the date of exercise is sufficient to satisfy the Exercise Price.

In its discretion, the Committee also may authorize (at the time an Option is granted or thereafter) Company financing to assist the Participant as to payment of the Exercise Price on such terms as may be offered by the Committee in its discretion. Payment must be made at the time that the Option or any part thereof is exercised, and no shares may be issued or delivered upon exercise of an option until full payment has been made by the Participant. The holder of an Option, as such, has none of the rights of a stockholder.

(d) Conditions to the Exercise of an Option. Each Option granted under the Plan is exercisable by whom, at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee specifies in the Stock Incentive Agreement; provided, however, that subsequent to the grant of an Option, the Committee, at any time before complete termination of such Option, may accelerate the time or times at which such Option may be exercised in whole or in part, including, without limitation, upon a Change in Control and may permit the Participant or any other designated person to exercise the Option, or any portion thereof, for all or part of the remaining Option term, notwithstanding any provision of the Stock Incentive Agreement to the contrary.

(e) Termination of Incentive Stock Option . With respect to an Incentive Stock Option, in the event of Termination of Employment of a Participant, the Option or portion thereof held by the Participant which is unexercised will expire, terminate, and become unexercisable no later than the expiration of three (3) months after the date of Termination of Employment; provided, however, that in the case of a holder whose Termination of Employment is due to death or Disability, one (1) year will be substituted for such three (3) month period; provided, further that such time limits may be exceeded by the Committee under the terms of the grant, in which case, the Incentive Stock Option will be a Nonqualified Stock Option if it is exercised after the time limits that would otherwise apply. For purposes of this Subsection (e), Termination of Employment of the Participant will not be deemed to have occurred if the Participant is employed by another corporation (or a parent or subsidiary corporation of such other corporation) which has assumed the Incentive Stock Option of the Participant in a transaction to which Code Section 424(a) is applicable.

(f) Special Provisions for Certain Substitute Options . Notwithstanding anything to the contrary in this Section 3.2, any Option issued in substitution for an option previously issued by another entity, which substitution occurs in connection with a transaction to which Code Section 424(a) is applicable, may provide for an exercise price computed in accordance with such Code Section and the regulations thereunder and may contain such other terms and conditions as the Committee may prescribe to cause such substitute Option to contain as nearly as possible the same terms and conditions (including the applicable vesting and termination provisions) as those contained in the previously issued option being replaced thereby.

3.3 Terms and Conditions of Stock Appreciation Rights . Each Stock Appreciation Right granted under the Plan must be evidenced by a Stock Incentive Agreement. A Stock Appreciation Right entitles the Participant to receive the excess of (1) the Fair Market Value of a specified or determinable number of shares of the Stock at the time of payment or exercise over (2) a specified or determinable price which, in the case of a Stock Appreciation Right granted in connection with an Option, may not be less than the Exercise Price for that number of shares subject to that Option. A Stock Appreciation Right granted in connection with a Stock Incentive may only be exercised to the extent that the related Stock Incentive has not been exercised, paid or otherwise settled.

(a) Settlement . Upon settlement of a Stock Appreciation Right, the Company must pay to the Participant the appreciation in cash or shares of Stock (valued at the aggregate Fair Market Value on the date of payment or exercise) as provided in the Stock Incentive Agreement or, in the absence of such provision, as the Committee may determine.

(b) Conditions to Exercise . Each Stock Appreciation Right granted under the Plan is exercisable or payable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee specifies in the Stock Incentive Agreement; provided, however, that subsequent to the grant of a Stock Appreciation Right, the Committee, at any time before complete termination of such Stock Appreciation Right, may accelerate the time or times at which such Stock Appreciation Right may be exercised or paid in whole or in part.

3.4 Terms and Conditions of Stock Awards . The number of shares of Stock subject to a Stock Award and restrictions or conditions on such shares, if any, will be as the Committee determines, including, without limitation, Performance Goals that must be achieved as a condition to vesting of the Stock Award and the certificate for such shares will bear evidence of any restrictions or conditions. Subsequent to the date of the grant of the Stock Award, the Committee has the power to permit, in its discretion, an acceleration of the expiration of an applicable restriction period with respect to any part or all of the shares awarded to a Participant. The Committee may require a cash payment from the Participant in an amount no greater than the aggregate Fair Market Value of the shares of Stock awarded determined at the date of grant in exchange for the grant of a Stock Award or may grant a Stock Award without the requirement of a cash payment.

3.5 Terms and Conditions of Dividend Equivalent Rights . A Dividend Equivalent Right entitles the Participant to receive payments from the Company in an amount determined by reference to any cash dividends paid on a specified number of shares of Stock to Company stockholders of record during the period such rights are effective. The Committee may impose such restrictions and conditions on any Dividend Equivalent Right as the Committee in its discretion shall determine, including the date any such right shall terminate and may reserve the right to terminate, amend or suspend any such right at any time.

(a) Payment . Payment in respect of a Dividend Equivalent Right may be made by the Company in cash or shares of Stock (valued at Fair Market Value on the date of payment) as provided in the Stock Incentive Agreement or Stock Incentive Program, or, in the absence of such provision, as the Committee may determine.

(b) Conditions to Payment . Each Dividend Equivalent Right granted under the Plan is payable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee specifies in the applicable Stock Incentive Agreement or Stock Incentive Program; provided, however, that subsequent to the grant of a Dividend Equivalent Right, the Committee, at any time before complete termination of such Dividend Equivalent Right, may accelerate the time or times at which such Dividend Equivalent Right may be paid in whole or in part.

3.6 Terms and Conditions of Performance Unit Awards . A Performance Unit Award shall entitle the Participant to receive, at a specified future date, payment of an amount equal to all or a portion of the value of a specified or determinable number of units (stated in terms of a designated or determinable dollar amount per unit) granted by the Committee. At the time of the grant, the Committee must determine the base value of each unit, the number of units subject to a Performance Unit Award, and the Performance Goals applicable to the determination of the ultimate payment value of the Performance Unit Award. The Committee may provide for an alternate base value for each unit under certain specified conditions.

(a) Payment . Payment in respect of Performance Unit Awards may be made by the Company in cash or shares of Stock (valued at Fair Market Value as of the date payment

is owed) as provided in the applicable Stock Incentive Agreement or Stock Incentive Program or, in the absence of such provision, as the Committee may determine.

(b) Conditions to Payment. Each Performance Unit Award granted under the Plan shall be payable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee shall specify in the applicable Stock Incentive Agreement or Stock Incentive Program; provided, however, that subsequent to the grant of a Performance Unit Award, the Committee, at any time before complete termination of such Performance Unit Award, may accelerate the time or times at which such Performance Unit Award may be paid in whole or in part.

3.7 Terms and Conditions of Phantom Shares. Phantom Shares shall entitle the Participant to receive, at a specified future date, payment of an amount equal to all or a portion of the Fair Market Value of a specified number of shares of Stock at the end of a specified period. At the time of the grant, the Committee will determine the factors which will govern the portion of the rights so payable, including, at the discretion of the Committee, any performance criteria that must be satisfied as a condition to payment. Phantom Share awards containing performance criteria may be designated as Performance Unit Awards.

(a) Payment. Payment in respect of Phantom Shares may be made by the Company in cash or shares of Stock (valued at Fair Market Value on the date of payment) as provided in the applicable Stock Incentive Agreement or Stock Incentive Program, or, in the absence of such provision, as the Committee may determine.

(b) Conditions to Payment. Each Phantom Share granted under the Plan is payable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee may specify in the applicable Stock Incentive Agreement or Stock Incentive Program; provided, however, that subsequent to the grant of a Phantom Share, the Committee, at any time before complete termination of such Phantom Share, may accelerate the time or times at which such Phantom Share may be paid in whole or in part.

3.8 Treatment of Awards Upon Termination of Employment. Except as otherwise provided by Plan Section 3.2(e), any award under this Plan to a Participant who has experienced a Termination of Employment may be cancelled, accelerated, paid or continued, as provided in the applicable Stock Incentive Agreement or Stock Incentive Program, or, in the absence of such provision, as the Committee may determine. The portion of any award exercisable in the event of continuation or the amount of any payment due under a continued award may be adjusted by the Committee to reflect the Participant's period of service from the date of grant through the date of the Participant's Termination of Employment or such other factors as the Committee determines are relevant to its decision to continue the award.

SECTION 4 - RESTRICTIONS ON STOCK

4.1 Escrow of Shares. Any certificates representing the shares of Stock issued under the Plan will be issued in the Participant's name, but, if the applicable Stock Incentive Agreement or Stock Incentive Program so provides, the shares of Stock will be held by a custodian designated by the Committee (the "Custodian"). Each applicable Stock Incentive Agreement or Stock Incentive Program providing for transfer of shares of Stock to the Custodian must appoint the Custodian as the attorney-in-fact for the Participant for the term specified in the applicable Stock Incentive Agreement or Stock Incentive Program, with full power and authority in the Participant's name, place and stead to transfer, assign and convey to the Company any shares of Stock held by the Custodian for such Participant, if the Participant forfeits the shares under the terms of the applicable Stock Incentive Agreement or Stock Incentive Program. During the period that the Custodian holds the shares subject to this Section, the Participant is entitled to all rights, except as provided in the applicable Stock Incentive Agreement or Stock Incentive Program, applicable to shares of Stock not so held. Any dividends declared on shares of Stock held by the Custodian must as provided in the applicable Stock Incentive Agreement or Stock Incentive Program, be paid directly to the Participant or, in the alternative, be retained by the Custodian or by the Company until the expiration of the term specified in the applicable Stock Incentive Agreement or Stock Incentive Program and shall then be delivered, together with any proceeds, with the shares of Stock to the Participant or to the Company, as applicable.

4.2 Restrictions on Transfer. The Participant does not have the right to make or permit to exist any disposition of the shares of Stock issued pursuant to the Plan except as provided in the Plan or the applicable Stock Incentive Agreement or Stock Incentive Program. Any disposition of the shares of Stock issued under the Plan by the Participant not made in accordance with the Plan or the applicable Stock Incentive Agreement or Stock Incentive Program will be void. The Company will not recognize, or have the duty to recognize, any disposition not made in accordance with the Plan and the applicable Stock Incentive Agreement or Stock Incentive Program, and the shares so transferred will continue to be bound by the Plan and the applicable Stock Incentive Agreement or Stock Incentive Program.

SECTION 5 - GENERAL PROVISIONS

5.1 Withholding. The Company must deduct from all cash distributions under the Plan any taxes required to be withheld by federal, state or local government. Whenever the Company proposes or is required to issue or transfer shares of Stock under the Plan or upon the vesting of any Stock Award, the Company has the right to require the recipient to remit to the Company an amount sufficient to satisfy any federal, state and local withholding tax requirements prior to the delivery of any certificate or certificates for such shares or the vesting of such Stock Award. A Participant may pay the withholding tax in cash, or, if the applicable Stock Incentive Agreement or Stock Incentive Program provides, a Participant may elect to have the number of shares of Stock he is to receive reduced by, or with respect to a Stock Award, tender back to the Company, the smallest number of whole shares of Stock which, when multiplied by the Fair Market Value of the shares of Stock determined as of the Tax Date (defined below), is sufficient to satisfy federal, state and local, if any, withholding taxes arising

from exercise or payment of a Stock Incentive (a "Withholding Election"). A Participant may make a Withholding Election only if both of the following conditions are met:

(a) The Withholding Election must be made on or prior to the date on which the amount of tax required to be withheld is determined (the "Tax Date") by executing and delivering to the Company a properly completed notice of Withholding Election as prescribed by the Committee; and

(b) Any Withholding Election made will be irrevocable except on six months advance written notice delivered to the Company; however, the Committee may in its sole discretion disapprove and give no effect to the Withholding Election.

5.2 Changes in Capitalization; Merger; Liquidation .

(a) The number of shares of Stock reserved for the grant of Options, Dividend Equivalent Rights, Performance Unit Awards, Phantom Shares, Stock Appreciation Rights and Stock Awards; the number of shares of Stock reserved for issuance upon the exercise or payment, as applicable, of each outstanding Option, Dividend Equivalent Right, Performance Unit Award, Phantom Share and Stock Appreciation Right and upon vesting or grant, as applicable, of each Stock Award; the Exercise Price of each outstanding Option and the specified number of shares of Stock to which each outstanding Dividend Equivalent Right, Performance Unit Award, Phantom Share and Stock Appreciation Right pertains may be proportionately adjusted for any increase or decrease in the number of issued shares of Stock resulting from a subdivision or combination of shares or the payment of a stock dividend in shares of Stock to holders of outstanding shares of Stock or any other increase or decrease in the number of shares of Stock outstanding effected without receipt of consideration by the Company.

(b) In the event of any merger, consolidation, extraordinary dividend (including a spin-off), reorganization or other change in the corporate structure of the Company or its Stock or tender offer for shares of Stock, the Committee, in its sole discretion, may make such adjustments with respect to awards and take such other action as it deems necessary or appropriate to reflect or in anticipation of such merger, consolidation, extraordinary dividend (including a spin-off), reorganization, other change in corporate structure or tender offer, including, without limitation, the substitution of new awards, the termination or adjustment of outstanding awards, the acceleration of awards or the removal of restrictions on outstanding awards, all as may be provided in the applicable Stock Incentive Agreement or, if not expressly addressed therein, as the Committee subsequently may determine in the event of any such merger, consolidation, extraordinary dividend (including a spin-off), reorganization or other change in the corporate structure of the Company or its Stock or tender offer for shares of Stock. Any adjustment pursuant to this Section 5.2 may provide, in the Committee's discretion, for the elimination without payment therefor of any fractional shares that might otherwise become subject to any Stock Incentive.

(c) The existence of the Plan and the Stock Incentives granted pursuant to the Plan must not affect in any way the right or power of the Company to make or authorize any adjustment, reclassification, reorganization or other change in its capital or business structure,

any merger or consolidation of the Company, any issue of debt or equity securities having preferences or priorities as to the Stock or the rights thereof, the dissolution or liquidation of the Company, any sale or transfer of all or any part of its business or assets, or any other corporate act or proceeding.

5.3 Cash Awards. The Committee may, at any time and in its discretion, grant to any holder of a Stock Incentive the right to receive, at such times and in such amounts as determined by the Committee in its discretion, a cash amount which is intended to reimburse such person for all or a portion of the federal, state and local income taxes imposed upon such person as a consequence of the receipt of the Stock Incentive or the exercise of rights thereunder.

5.4 Compliance with Code. All Incentive Stock Options to be granted hereunder are intended to comply with Code Section 422, and all provisions of the Plan and all Incentive Stock Options granted hereunder must be construed in such manner as to effectuate that intent.

5.5 Right to Terminate Employment or Service Relationship. Nothing in the Plan or in any Stock Incentive Agreement confers upon any Participant the right to continue as an officer, employee, director or service provider of the Company or any of its Affiliates or affect the right of the Company or any of its Affiliates to terminate the Participant's employment or service relationship at any time.

5.6 Non-alienation of Benefits. Other than as specifically provided with regard to the death of a Participant, no benefit under the Plan may be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge; and any attempt to do so shall be void. No such benefit may, prior to receipt by the Participant, be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the Participant.

5.7 Restrictions on Delivery and Sale of Shares; Legends. Each Stock Incentive is subject to the condition that if at any time the Committee, in its discretion, shall determine that the listing, registration or qualification of the shares covered by such Stock Incentive upon any securities exchange or under any state or federal law is necessary or desirable as a condition of or in connection with the granting of such Stock Incentive or the purchase or delivery of shares thereunder, the delivery of any or all shares pursuant to such Stock Incentive may be withheld unless and until such listing, registration or qualification shall have been effected. If a registration statement is not in effect under the Securities Act of 1933 or any applicable state securities laws with respect to the shares of Stock purchasable or otherwise deliverable under Stock Incentives then outstanding, the Committee may require, as a condition of exercise of any Option or as a condition to any other delivery of Stock pursuant to a Stock Incentive, that the Participant or other recipient of a Stock Incentive represent, in writing, that the shares received pursuant to the Stock Incentive are being acquired for investment and not with a view to distribution and agree that the shares will not be disposed of except pursuant to an effective registration statement, unless the Company shall have received an opinion of counsel that such disposition is exempt from such requirement under the Securities Act of 1933 and any applicable state securities laws. The Company may include on certificates representing shares delivered pursuant to a Stock Incentive such legends referring to the foregoing representations or

restrictions or any other applicable restrictions on resale as the Company, in its discretion, shall deem appropriate.

5.8 Listing and Legal Compliance. The Committee may suspend the exercise or payment of any Stock Incentive so long as it determines that securities exchange listing or registration or qualification under any securities laws is required in connection therewith and has not been completed on terms acceptable to the Committee.

5.9 Termination and Amendment of the Plan. The Board of Directors at any time may amend or terminate the Plan without stockholder approval; provided, however, that the Board of Directors may condition any amendment on the approval of stockholders of the Company if such approval is necessary or advisable with respect to tax, securities or other applicable laws. No such termination or amendment without the consent of the holder of a Stock Incentive may adversely affect the rights of the Participant under such Stock Incentive.

5.10 Stockholder Approval. The Plan must be submitted to the stockholders of the Company for their approval within twelve (12) months before or after the adoption of the Plan by the Board of Directors of the Company. If such approval is not obtained, any Stock Incentive granted hereunder will be void.

5.11 Choice of Law. The laws of the State of Delaware govern the Plan, to the extent not preempted by federal law, without reference to the principles of conflict of laws.

IN WITNESS WHEREOF, the Company has executed this Plan on this 19th day of November, 2004.

TYSON FOODS, INC.

By: /s/ Dennis Leatherby

Title: Sr. Vice President, Finance and
Treasurer and Interim Chief
Financial Officer

**AMENDMENT
TO THE
TYSON FOODS, INC. 2000 STOCK INCENTIVE PLAN
(AS AMENDED AND RESTATED EFFECTIVE NOVEMBER 19, 2004)**

THIS AMENDMENT is made as of February 2, 2007, by Tyson Foods, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Company").

WHEREAS, the Company maintains the Tyson Foods, Inc. 2000 Stock Incentive Plan, as amended and restated effective November 19, 2004 (the "Plan"); and

WHEREAS, the Company wishes to amend the Plan to provide additional shares for issuance under the Plan

NOW, THEREFORE, the Company does hereby amend the Plan, effective as of February 2, 2007 by deleting Section 2.2 in its entirety and by substituting therefore the following:

"2.2 Stock Subject to the Plan. Subject to adjustment in accordance with Section 5.2, 60,660,000 shares of Stock (the "Maximum Plan Shares") are hereby reserved exclusively for issuance pursuant to Stock Incentives. At no time may the Company have outstanding Stock Incentives and shares of Stock issued in respect of Stock Incentives under the Plan in excess of the Maximum Plan Shares. The shares of Stock attributable to the nonvested, unpaid, unexercised, unconverted or otherwise unsettled portion of any Stock Incentive that is forfeited or cancelled or expires or terminates for any reason without becoming vested, paid, exercised, converted or otherwise settled in full will again be available for purposes of the Plan."

Except as specifically provided herein, the Plan shall remain in full force and effect as prior to this Amendment.

IN WITNESS WHEREOF, the Company has caused this Amendment to be executed on the day and year first above written.

TYSON FOODS, INC.

By: /s/ Wade Miquelon

Title: Executive Vice President and Chief
Financial Officer

Attest:

By: /s/ R. Read Hudson

Title: Secretary

**SECOND AMENDMENT
TO THE
TYSON FOODS, INC. 2000 STOCK INCENTIVE PLAN
(AS AMENDED AND RESTATED EFFECTIVE NOVEMBER 19, 2004)**

THIS SECOND AMENDMENT is made as of the 13th day of August, 2007, by Tyson Foods, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Company").

WITNESSETH:

WHEREAS, the Company maintains the Tyson Foods, Inc. 2000 Stock Incentive Plan (the "Plan"), as such Plan was amended and restated effective November 19, 2004; and

WHEREAS, the Company wishes to amend the Plan to provide participants with an opportunity to designate beneficiaries with respect to stock incentives other than incentive stock options and to provide a hierarchy of individuals to receive such stock incentives following a participant's death if no beneficiary is designated.

NOW, THEREFORE, the Company does hereby amend the Plan as follows:

1. By deleting the existing Section 3.1(e) and substituting therefore the following:

“(e) Unless otherwise permitted by the Committee, Stock Incentives are not transferable or assignable except as provided in this Section. Following a Participant's death, Stock Incentives shall be transferred or assigned to the Designated Beneficiary; or if the Participant does not have a Designated Beneficiary, to the Participant's surviving spouse; or if the Participant is unmarried, to the Participant's estate. Notwithstanding the foregoing, the Committee shall not permit Incentive Stock Options to be transferred or assigned except by will or by the laws of descent and distribution governing the State in which the Participant was domiciled at the time of the Participant's death. Stock Incentives are exercisable, during the Participant's lifetime, only by the Participant or by the legal representative of the Participant. In the event of the death of the Participant, Stock Incentives are only exercisable by the Designated Beneficiary; or if the Participant does not have a Designated Beneficiary, by the Participant's surviving spouse; or if the Participant is unmarried, by the legal representative of the Participant's estate if one is appointed within ninety (90) days of the Participant's death; or if no such legal representative is appointed, by the person(s) taking under the laws of descent and distribution governing the State in which the Participant was domiciled at the time of the Participant's death. For purposes of this Section, the Participant's 'Designated Beneficiary' is the beneficiary of the Participant designated in writing in the manner and within the time frame provided by the Committee.”

2. This Second Amendment is effective as to all currently outstanding grants and those grants made after the date of this Second Amendment.

Except as specifically provided herein, the Plan shall remain in full force and effect as prior to this Second Amendment.

IN WITNESS WHEREOF, the Company has caused this Second Amendment to be executed on the day and year first above written.

TYSON FOODS, INC.

By: /s/ Wade Miquelon

Title: Executive Vice President and Chief
Financial Officer

Attest:

By: /s/ R. Read Hudson

Title: Secretary

**Retirement Income Plan
of IBP, inc.**

**As Amended and Restated
Effective August 1, 2000**

1.1 Merger/Restatement

THE RETIRMENT INCOME PLAN OF IBP, inc. was hereby created effective January 1, 1992 through the amendment and restatement of the Supplemental Retirement Savings Plan of IBP, inc. (the "SRSP") pursuant to Article VI of the SRSP and the amendment and restatement of the Group Deferred Compensation Plan of IBP, inc. (the "GDSP") pursuant Section X of the "GDSP", as authorized by a Resolution adopted by the Company's Board of Directors on January 29, 1992. The merged Plan was amended and restated effective January 1, 1998, and again amended and restated effective August 1, 2000.

1.2 Establishment and Purpose

The Plan shall continue the purposes for which the SRSP and GDSP were both established by the Company. Those purposes include: (1) to provide to select group of Highly Compensated Employees, as defined by the Internal Revenue Code of 1986, as amended, a plan for the creation of retirement savings through employer deferred Nonelective Profit Sharing Contributions; (2) to permit deferral of current income including base salary, bonuses, stock grant (cash equivalent or stock), and other cash payments from the Company such as through employer Matching Contributions and/or through an unfunded "Executive Supplemental Retirement Plan" within the meaning of Sections 201(2), 301(a)(3), and 401(a)(1) of ERISA and consistent with the restrictions and limitations placed upon the participation of highly compensated employees in qualified plans under the Internal Revenue Code of 1986; and (3) for any other business purpose which may assist the company to attract, retain and motivate this select group.

1.3 Application of Plan

The terms and provisions of this Plan are applicable to (i) eligible employees who are in the active employ of the Company on or after January 1, 1993 and (ii) Participants in the SRSP and GDSP on January 1, 1992.

2.1 Definitions

The following terms shall have the meaning stated below unless the context clearly indicates otherwise:

- a. "Board of Directors" shall mean the Board of Directors of IBP, inc.
- b. "Bonus Year" shall mean the fiscal year of IBP, inc., which is the period during which employees earn his/her discretionary cash bonus pursuant to "IBP Policies Affecting Employee Relations" or his/her contract for employment, if any.
- c. "Break in Service" shall mean the cessation of crediting service when the Employee...
 - (i) resigns;
 - (ii) is discharged;
 - (iii) fails to report for work within the period required under the law or Employer's policy;
 - (iv) is on an authorized leave of absence and fails to return to employment, in which case the Employee's Break in Service shall be deemed to have occurred on the first day of the Employee's authorized leave of absence; or
 - (v) retires or dies.
- d. "Cash Balance" shall mean the amount of a Participant's Account with respect to each deferral under this Plan and all deferrals previously made under the applicable provisions of the SRSP and GDCP, together with the notional gains, losses and/or interest thereon as provided by this Plan, to the extent unpaid. The "Cash Balance" will exclude the non-vested employer Nonelective Profit Sharing Contributions and/or Matching Contributions.
- e. "Code" shall mean the Internal Revenue Code of 1986, as now in effect or hereafter amended.
- f. "Committee" or "Plan Committee" shall mean the Committee designated to administer the Plan in Section 4.1.
- g. "Deferral Election" shall mean that portion of a Participant's base salary, bonus, stock grant (cash equivalent or stock) or other cash payment which the

Participant elects to defer pursuant to the provisions of this Plan and all deferrals previously made under the applicable provisions of the SRSP and GDCP.

- h. "Disability" shall mean disability as defined for purposes of Social Security, plus a termination of active employment from the Company.
- i. "Key Employee" shall mean the Highly Compensated Employee as that term is defined in the Savings Plan and/or who is also a key person to the Company as evidenced by his position of responsibility as a supervisor, manager or above.
- j. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as now in effect or hereafter amended.
- k. "One-Year Break in Service" means a Plan year in which an Employee who has had a Break in Service has no hours of service.
- l. "Payment Date" shall mean January 15 coupled with the time and method of payment previously elected by the Participant.
- m. "Participant" shall mean an employee who has satisfied the requirements of Section 3.1 and 3.2, or a former employee for whose benefit an account is maintained under the provisions of this Plan.
- n. "Participant's Account" shall mean the bookkeeping entries maintained by the Company or its designee in its accounting records for all of a Participant's deferrals either under this Plan, or under the prior SRSP and GDCP and for nonelective profit sharing contributions made by the Company.
- o. "Plan Year" shall mean the first Plan Year which shall begin January 1, 1992 and end December 31, 1992, and subsequent Plan Years which shall begin on January 1 and end on the following December 31.
- p. "Retirement" shall mean the termination (either voluntary or involuntary) of an Employee's employment relationship with the Company on or after the age of 55 years.
- q. "Savings Plan" shall mean the Retirement Savings Plan of IBP, inc., a qualified plan under Code section 401(a) of the Internal Revenue Service.
- r. "Stock Plan Deferral" shall mean the fair market value stock equivalent or the shares of stock voluntarily deferred by a Participant pursuant to the terms of this Plan.

Unless the context clearly indicates otherwise, terms not defined in this Section have the meanings specified in the qualified Savings Plan. Where the defined meaning is intended, the term is capitalized.

2.2 Gender and Number

Except when otherwise indicated by the context, words in the masculine gender shall include the feminine; the plural shall include the singular and the singular shall include the plural.

2.3 Employment Rights

Establishment of this Plan shall not be construed to give any Participant the right to continued employment by the Company, to have his terms of employment altered or amended, or to any benefits not specifically provided by this Plan.

2.4 Severability

In the event any provision of the Plan shall be held invalid or illegal for any reason, any illegality of invalidity shall not effect the remaining parts of the Plan, but the Plan shall be construed and enforced as if the illegal or invalid provision had never been included, and the Company shall have the right to correct and remedy such issues or illegality or invalidity by amendment, as provided in the Plan.

2.5 Applicable Law

This Plan is fully exempt from Titles II, III, and IV of ERISA. The Plan shall be governed and construed in accordance with Title I of ERISA and the laws of the State of Nebraska.

3.1 Eligibility for Participation

An employee of the Company shall be eligible to become a Participant in this Plan if: (i) he is a Key Employee, or (ii) prior to January 1, 1992 he elected to participate in the GDCP for the Plan Year pursuant to Section 4.1 of the GDCP.

3.2 Participation

- a. Except as to the Employer Nonelective Profit Sharing Contributions, an employee who is eligible to participate in this plan shall become a Participant in the Plan as of the first day of the Plan Year in which the event described in Section 3.1 occurs.
- b. With respect to the Employer Nonelective Profit Sharing Contributions, an employee was an eligible Participant if he/she had been an employee January 1 through December 31 , provided, however, that Employer Nonelective Profit Sharing Contributions will not be made to participants, except for TASCO, under the Plan for any Plan Year beginning on or after January 1, 1999.

3.3 Termination of Participation

An employee who ceases to be a Highly Compensated Employee or a Key Employee during any Plan Year shall cease to be eligible to contribute to the Plan. The employee's Deferral Elections shall cease on the last day of the Company's regular accounting period during which eligibility ended. Deferral Elections for that portion of the Plan Year occurring prior to eligibility ending shall remain effective for those amounts of base salary, bonus, stock grants (cash equivalent or stock) and other cash payments for which a Deferral Election was made. A Deferral Election will be treated as null & void for purposes of the Plan Year if a Participant ceases to be a Highly Compensated Employee or a Key Employee between the time the Deferral Election is executed and the time it would become effective.

3.4 Service Requirement for Nonelective Profit Sharing and Matching Contributions

All years of service with the Employer are counted toward eligibility to participate for purposes of the Nonelective Profit Sharing Contributions and/or Matching Contributions, except as follows.

Nonvested Participants

In the case of a Participant whose right to the account balance derived from Employer Nonelective Profit Sharing Contributions and/or Matching Contributions is

forfeitable, years of service before a period of consecutive 1-year breaks in service will not be taken into account in computing eligibility service if the number of consecutive 1-year breaks in service in such period equals or exceeds the greater of:

- (i) five; or
- (ii) the total number of years of service. Such total number of years of service will not include any years of service disregarded under the preceding sentence by reason of a prior breaks in service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the plan, or, if terminated, shall participate immediately upon reemployment.

4.1 Deferral Elections

The Participant may elect by completing and returning an election form to the Plan Committee, or its designee, to have the Company contribute all or a portion of the Participant's base salary, bonus, or stock grant shares pursuant to the Officer Long-Term Stock Grant Plan and the Company may in its sole discretion contribute other cash payments on a Participant's behalf (collectively "Compensation Deferrals") to the Plan.

The Participant's Compensation Deferrals shall be made according to the following terms and provisions:

- a. base salary may be deferred in a percentage or fixed dollar amount (i) prior to the beginning of, or (ii) as to base salary not yet earned at any time during, the Plan Year. The Participant may elect to discontinue base salary deferral at any time during the Plan Year, provided that the election to discontinue shall be effective until the next salary period following the date of the participant's election to discontinue;
- b. bonus may be deferred prior to the beginning of or during the Bonus Year as follows:
 - (1) in a percentage amount not to exceed 100%, of the Participant's bonus if the Participant's date of election as to such bonus deferral is made four (4) months prior to the end of the Bonus Year; or
 - (2) in the alternative, in a fixed dollar amount as the Participant may elect for the bonus, but not to exceed 100% of the Participant's if the Participant's date of election as to such bonus deferral is made four (4) months prior to the end of the Bonus Year;
- c. the fair market value of shares and dividends of participants in the Officer Long-Term Stock Plan (Stock Plan) may be deferred for any shares or dividends not yet earned. A participant in the Stock Plan may defer 100% or a portion of this fair market value in one (1) percent increments. The election to defer shall be made prior to November 1 in the calendar year prior to the calendar year that such stock would be vested pursuant to the Stock Plan;
- d. the Plan Committee may reject (i) any or all of a Deferral Election by a Participant for any Plan Year if the Participant's election form is not timely filed or completed in full compliance with the terms of the form

and of this Plan, and (ii) all Deferral Elections for any Plan Year if the Plan Committee in its sole discretion shall determine at any time prior to the end of the then current Plan Year that deferrals of compensation have become inadvisable by reason of changes in the Federal tax laws, or for any other reason;

- e. as to (i) that portion of base salary or bonus for which the Participant has not made a Deferral Election, (ii) a Plan Year for which the Participant has failed to make any Deferral Election, (iii) a Plan Year in which the Plan Committee rejects a Participant's Deferral Election, or (iv) a Plan Year in which the Plan Committee rejects all Compensation Deferral Elections, the Participant shall be paid by the company in the usual manner and without regard to this Plan; and
- f. the Participant's base salary, bonus, stock grant shares, and other cash payments are such amounts of compensation as are payable by the Company to the Participant by reason of employment with the Company and without regard to any term or provision of this Plan; no term or provision of this Plan shall amend or be interpreted to alter or change the Company's compensation policies with regard to the payment of base salary, bonus, stock grant cash equivalent, or other cash payments to employees.

4.2 Matching Contributions

The Company shall make a Matching Contribution equal to 50 percent of the base salary contributed by or on behalf of each Participant employed by the Company who has satisfied the eligibility requirements in section 3.1 and is employed in a Matching Contributions Unit; provided, however, that no more than 3 percent of the Participant's gross compensation for any pay period shall be matched by such Matching Contribution.

The Matching Contributions to be made on behalf of a Participant for a Plan Year shall be determined by reference to each pay period within such Plan Year during which the Participant has an election in effect with respect to base salary contributed, if a Participant is making contributions of base salary to the Savings Plan and at the same time is making contributions of base salary to this Plan then the Matching Contributions described here and also in section 4.4 of the Savings Plan shall be deposited in the Participant's account in the RSP first, and if there is any Matching Contributions that cannot be deposited into the Savings Plan they shall be deposited into this Plan. The Matching Contributions shall be allocated to such Participant's Matching Contributions Account at the same time as the base salary, which it matches.

4.3 Participant's Accounts

- a. Consistent with the terms and provisions of Section 7.1 of this Plan there shall be maintained for each Participant, for bookkeeping purposes only, a separate notional deferred account in the books and records of the Company. Each account shall contain a sub-account for each time and method of payment that the Participant has created by a Deferral Election or time and method of payment elected for either the Nonelective Profit Sharing Contributions or the Matching Contributions to the Plan. Each sub-account shall be credited with the amount of the Participant's Compensation Deferral, Employer's Nonelective Profit Sharing Contribution or Matching Contribution and the notional gains, losses and/or accrued interest on such deferrals under this Plan.
- b.
 1. On or after January 1, 1998, amounts credited to a Participant's Account (except for Stock Plan Deferral subaccount) shall be credited with gains, losses, or interest based upon optional investment directions made by the Participant in accordance with notional investment deferral crediting options and procedures adopted by the Committee from time to time. A Participant may make a change in allocations on a daily basis. The Employer specifically retains the right in its sole discretion to change the notional crediting options and procedures. Nor is the Employer required to follow the Participant's notional investment directions in any actual investment it may make or acquire in connection with Plan.
 2. On or after January 1, 1998, shares, if any, credited to a Participant's Account (subaccount) as Stock Plan Deferral, shall be maintained and credited or charged, including dividends, stock splits and the like as notional shares only. A Participant may elect to reallocate some or all of his/her balance in Stock Plan Deferral subaccount into one or more of the other notional investment deferral crediting options as adopted by the Committee from time to time. However, a Participant may not reallocate amounts so moved out of the Stock Plan Deferral subaccount back into it; nor may a Participant allocate other deferral amounts into the Stock Plan Deferral subaccount or reallocate other deferral amounts from other notional investment deferral crediting options into the Stock Plan Deferral subaccount.
- c. All sub-accounts under this Plan created between January 1, 1992 and December 31, 1997 earned interest at the rate fixed by the Executive Committee of the Board of Directors to be effective on the Payment Date

of each year which rate shall be no less than the average of the prime or reference rates quoted by the Company's principal lender (the "Reference Rate(s)") on the first banking days of March, June, September and December (the "Reference Date(s)") immediately preceding the Payment Date and which was accrued and credited to the sub-account on the annual Payment Date based upon the average daily balance in the sub-account for the preceding Plan Year. After crediting the sub-account with the accrued interest all distributions, withdrawals, and other payments to the Participant for the Plan Year were paid from such sub-account based upon the remaining number of installments due to the Participant under this Plan or due to the Participant pursuant to Section 4.5b of this Plan relating to the prior GDCP or SRSP, provided that, as to either: (i) a lump sum distribution payment upon termination, or (ii) a final installment payment, which did not occur on a Payment Date pursuant to Section 4.5b, such payment earned interest at the rate fixed by the Executive Committee which rate was no less than (x) the Reference Rate quoted on the December Reference Date, or (y) the average of all the Reference Rates quoted on the Reference Dates, preceding the date of such payment during the Plan Year, and which was accrued and credited to the Participant's sub-account based on the average daily balance in the sub-account from the preceding Payment Date and was included in such payment to the Participant.

- d. Deferral amounts shall be credited to a Participant's account as of the business date it would have otherwise been received by the Participant, or in the case of any Employer Contribution, as defined under Section 4.5 herein. Valuation on a Participant's Accounts shall be made on a daily basis.

4.4 Vesting

- a. Deferral Elections

Under this Plan a Participant shall at all times be 100% vested in his/her Cash Balance, except as described in Section 4.4(b). In addition, a Participant shall be 100% vested in the balance of his/her Stock Plan Deferral subaccount(s), if any, including any dividends, stock splits or the like.

- b. Employer Contributions

A Participant shall have a vested and nonforfeitable interest in that portion of such Participant's Nonelective Profit Sharing Contribution and/or Matching Contribution Account in accordance with the following schedule:

<u>Completed Years of Service</u>	<u>Vested Percentage</u>
Less than 5 years	-0%-
5 or more years	100%

- (i) Notwithstanding the above vesting schedule, a Participant shall be fully vested and have a nonforfeitable interest in the Participant's entire Nonelective Profit Sharing Contributions and/or Matching Contributions Accounts if the Participant retires at or after attaining early retirement age 55;
- (ii) the Participant attains normal retirement age 65 while still an employee;
- (iii) the Participant dies or suffers a Disability while an Employee; or
- (iv) while the Participant is an Employee, contributions to the Plan are completely discontinued or the Plan is terminated, or the Plan is partially terminated and such Participant is affected by such partial termination.

An Employee who due to salary increase becomes a Key Employee, such Employee shall be credited with Service, for purposes of vesting, for all the Employee's employment with Employer before and after such change in compensation level. Such Service shall be credited in accordance with Section 4.4.

4.5 Deferral Elections: Form of Payment and Commencement Date

Payments to Participants under this Plan shall be made in accordance with the Participant's timely made Deferral Elections, and shall be governed by the following terms:

a. Form of Payment

The Participant may make separate time and method of payment elections for Deferral Elections, either for salary reduction or bonus deferral, Employer Nonelective Profit Sharing Contributions and Officer Long-Term Stock Plan deferrals. Payments from the Participant's sub-accounts with regard to Deferral Elections under this Plan shall be paid on the applicable Payment Date(s), at the election of the Participant, either in:

- 1. one lump sum, or

2. substantially equal annual installments, not to exceed fifteen (15) commencing as the Participant elects provided that the minimum Cash Balance in any sub-account is \$5,000 or more and at such time as any sub-account is at that amount or below, the Cash Balance in such sub-account(s) shall be paid to the Participant on the next annual Payment Date, Any sub-account of less than \$5,000 shall be treated as a small account and distributed lump-sum regardless of the Participant's election.

b. Elections Under Former Plans

Elections made as to time and method of payment under the Company's SRSP and GDCP prior to January 1, 1992 by Participants shall continue in full force and effect as to each such election for each type of deferred cash award, salary deferral, non-discretionary award or profit sharing contribution, as those terms were used under the SRSP and GDCP. Elections made as to time and method of payment, effective as deferrals between January 1, 1992 and December 31, 1997, by Participants shall also continue in full force and effect.

c. Commencement Date

Payments to Participants under this Plan shall commence on such date as the Participant's Deferral Election shall specify as to time of payment, and unless the Participant otherwise directs in writing, must commence no later than the first annual Payment Date after the close of the Plan Year in which the Participant's termination of employment occurs. However, a Participant may elect a new Payment Date extending the Payment Date once, as to any deferral subaccount, and such new election as to that subaccount must be made by November 1 in the calendar year prior to the calendar year in which payment would begin. This election shall be made in writing to the Committee in such form and manner as the Committee in its sole discretion, shall prescribe from time to time.

d. Payment Date

The annual Payment Date for distributions to Participants under this Plan shall be January 2nd of each Plan Year or the first business day thereafter. The Payment Date shall also be the date for the accrual and crediting of interest to all Participants' sub-accounts under this Plan. The Payment Date shall not apply to time and method of payment elections governed by Section 4.5b of this Plan, except as to the crediting of gain, losses, and/or interest to the Participants' sub-accounts

e. Distribution To Beneficiaries

The balance, if any, of a deceased Participant's Account shall be distributed in accordance with the beneficiary designation made by a Participant on deferral election form filed by the Participant with the Plan Committee, or its designee. Such distribution shall be made in the manner provided in the election or, if no method is provided on such form, then in a lump sum to the beneficiary on January 2nd, or the first business day thereafter, of the next Plan Year. In the event a Participant fails to complete a beneficiary designation, the proceeds of a Participant's Account shall be payable to the Participant's legal representative.

f. **Hardship Withdrawals**

A Participant may apply in writing to the Committee for, and the Committee may permit, a hardship withdrawal of all or any part of a Participant's Account if the Committee, in its sole discretion, determines that the Participant has incurred a severe financial hardship resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, as determined by the Committee, in its sole and absolute discretion. The amount that may be withdrawn shall be limited to the amount reasonably necessary to relieve the hardship or financial emergency upon which the request is based, plus the federal and state taxes due on the withdrawal, as determined by the Committee. The Committee may require a Participant who requests a hardship withdrawal to submit such evidence as the Committee, in its sole discretion, deems necessary or appropriate to substantiate the circumstances upon which the request is based.

g. **Election based upon Change In Employer's Credit Rating.**

An existing Participant, and a newly eligible Participant may make a onetime election, on his/her first Deferral Election form applying to deferrals effective on or after January 1, 1998, to receive a lump sum distribution on his/her entire Cash Balance no later than forty-five (45) days after the date on which the Employer's Standard & Poor's rating on senior indebtedness falls below BB+. This one-time election applies to all Cash Balances attributable to deferrals on or after January 1, 1998, and failure to make this election on a timely basis will be deemed a waiver by the Participant to make this one-time election under the Plan.

4.6 Nonelective Profit Sharing Contributions

Notwithstanding any provision of the Plan to the contrary, Employer Nonelective Profit Sharing Contributions and the Accounts maintained in connection therewith shall be governed as prescribed below.

a. Discontinuance of Contributions

Employer Nonelective Profit Sharing Contributions will not be made to any employees, except for those employees of TASC0, under the Plan for any Plan Year beginning on or after January 1, 1999.

b. Maintenance of Accounts

Any Employer Nonelective Profit Sharing Contributions previously made with respect to a Participant shall continue to be held in a Employer Nonelective Profit Sharing Contribution Account on the Participant's behalf and shall remain subject to the terms and conditions herein, including the vesting provisions set out below.

c. Distributions and Withdrawals

- (i) Distributions of accrued benefits to which the Participant has a vested interest pursuant to Section 4.6f., shall be distributed as the Participant elected, which shall be no earlier than at the time of or subsequent to termination, disability, death or retirement.
- (ii) If, after death, retirement or termination, a Participant has a remaining balance in the Nonelective Profit Sharing Contribution and/or Matching Contribution Accounts, the accounts shall continue to be maintained and adjusted under Section 4.3 until such balance is distributed under the applicable provisions of the Plan.
- (iii) The annual Payment Date for distributions to Participants shall be January 15th of each Plan Year. The Payment Date shall not apply to the time and method of payment elections governed by Section 4.5b of this Plan except as to the crediting of gains, losses and/or interest on the Participant's sub-accounts.
- (iv) The balance, if any, of a deceased Participant's Nonelective Profit Sharing Contribution and/or Matching Contribution Accounts shall be distributed in accordance with the beneficiary designation made by the Participant on its Election form filed by the Participant with the Plan Committee, or its designee. Such distribution shall be made in the manner provided in the election, or if no method is provided on such form, then in a lump sum to the beneficiary.

- (v) In the event a Participant shall fail to make an election concerning distribution, distribution shall be made in a single lump sum on January 15th of the next Plan Year.
- (vi) Forfeitures of notional nonvested accrued benefits.
 - (a) If a Participant's employment terminates and he has notional nonvested accrued benefits balance in his Nonelective Profit Sharing Contribution and/or Matching Contribution Accounts, that amount shall be treated as a forfeiture at the end of the Plan Year in which termination of employment occurred unless the participant becomes reemployed by the Employer and is eligible to participate pursuant to Section 3.4.
 - (b) If a Participant forfeits any notional nonvested accrued benefits from his Nonelective Profit Sharing Contribution and/or Matching Contribution Accounts as described in (a) above, and is reemployed by any Employer prior to incurring five consecutive One-Year Break in service and is eligible to participate, the previously forfeited notional amounts will be restored.
 - (c) If a Participant incurs five consecutive One-Year Break in Service, the Participant shall permanently forfeit the nonvested accrued benefits pursuant to Section 3.4, at the time of the Participant's initial termination of employment.
- (vii) Commencement of Distributions

Payments to Participants of their vested (i.e., nonforfeitable) amounts from their Nonelective Profit Sharing Contribution and/or Matching Contribution Accounts shall commence on such date as the Participant's election shall specify as to the time of payment, subject to the provisions of Section 4.6 e. above and unless the Participant otherwise directs in writing, must commence no later than the first annual Payment Date after the close of the Plan Year in which the Participant's termination of employment occurs. However, a Participant may elect a new Payment Date extending the Payment Date once, as to any deferral subaccount, and such new election as to that subaccount must be made by November 1 in calendar year prior to the calendar year in which payment would begin. This election shall be made in writing to the Committee in such form and manner as the Committee in its sole discretion, shall prescribe from time to time.

If a Participant dies after the Participant's termination of employment but prior to receiving the full distribution of the Participant's Nonelective Profit Sharing Contribution and/or Matching Contribution Accounts, any unpaid balance thereof at the time of the Participant's account shall be distributed to the Participant's beneficiary consistent with the election method chosen by the Participant. If the Participant dies without having made an election as to time and method of payment to the designated beneficiary, the beneficiary shall be paid in a lump sum on January 15th of the Plan Year after the Participant's death.

(viii) Method of Distribution

The distribution of a Participant's benefit shall be made in one of the following ways as the Participant (or the beneficiary of a deceased Participant) shall select: (a) in a lump sum; or (b) in installments payable in substantially equal amounts continuing over a period certain not exceeding the longest of 15 years.

(ix) Hardship Withdrawals

Subject to the approval of the Plan Administrator, a Participant may make a hardship withdrawal from the Participant's Nonelective Profit Sharing Contribution and/or Matching Contribution Accounts as to the vested amounts only. The withdrawals shall be governed by the terms found in Section 4.5 f. above.

5.1 The Committee

This Plan shall be administered by the Plan Committee, which shall be made up of the General Counsel, Treasurer, and Division Head for Human Resources of the Company. The Committee shall be responsible for the general operation and administration of the Plan and for carrying out the provisions thereof. The Committee may delegate to others certain aspects of the management and operational responsibilities of the Plan including the employment of advisors and the delegation of ministerial duties to qualified individuals, provided that such delegation is in writing.

5.2 General Powers of Administration

The Committee shall have all powers necessary or appropriate to enable it to carry out its administrative duties. Not in limitation, but in application of the foregoing, the Committee shall have the duty and power to interpret the Plan and determine all questions that may arise hereunder as to the status and rights of Employees, Participants, and Beneficiaries. The Committee may exercise the powers hereby granted in its sole and absolute discretion. No member of the Committee shall be personally liable for any actions taken or not taken by the Committee unless the member's action involves willful misconduct.

5.3 Cost of Administration

The costs of administering the Plan shall be borne by the Employer unless and until the Participant receives written notice of the imposition of such administrative costs, with such costs to begin with the next Plan Year and none may be assessed retroactively for prior Plan Years. Such costs shall be charged against the Participant's Account and shall be uniform for all Plan Participants. Such costs shall not exceed the standard rates for similarly designed nonqualified plans under administration by high quality third party administrators at the time such costs are initially imposed and thereafter.

5.4 Indemnification of Committee

The Employer shall indemnify the members of the Committee, its agents, officers and employees of the Employer, against any and all claims, losses, damages, expenses, including attorney's fees, reasonably incurred by them, and any liability, including any amounts paid in settlement (with the Company's written approval) arising from their action or failure to act, except when the same is judicially determined to be attributable to their gross negligence or willful misconduct.

6.1 Claims

A person who believes that he is being denied a benefit to which he is entitled

Under the Plan (hereinafter referred to as a "Claimant") may file a written request for such benefit with the Committee, setting forth his claim. The request must be addressed to the Committee at the Employer's then principal place of business.

6.2 Claim Decision

Upon receipt of a claim, the Employer shall advise the Claimant that a reply will be forthcoming within ninety (90) days and shall, in fact, deliver such reply within such period. The Company may, however, extend the reply period for an additional ninety (90) days for reasonable cause. A failure to reply within the time period shall be deemed a denial of the Claimant's claim by the Employer

If the claim is denied in whole or in part, the Committee shall adopt a written opinion, using language calculated to be understood by the Claimant, setting forth:

- (1) The specific reason or reasons for such denial;
- (2) The specific reference to pertinent provisions of the Plan on which such denial is based;
- (3) A description of any additional material or information necessary for the Claimant to perfect his claim and an explanation why such material or such information is necessary;
- (4) Appropriate information as to the steps to be taken if the Claimant wishes to submit the claims for review; and
- (5) The time limits for requesting a review under Section 6.3 and for review under Section 6.4 hereof.

6.3 Requests for Review

Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Company review the determination of the Committee. Such request must be addressed to the Secretary of the Employer, at its then principal place of business. The Claimant or his duly authorized representative may, but need not, review the pertinent documents and submit issues and comments in writing for consideration by the Employer. If the Claimant does not request a review of the Corporation's

determination by the Secretary of the Employer within such sixty (60) day period, he shall be barred and estopped from challenging the Company's determination.

6.4 Review of Decision

Within sixty (60) days after the Secretary's receipt of a request for review, he will review the Company's determination. After considering all materials presented by the Claimant, the Secretary will render a written opinion, written in a manner calculated to be understood by the Claimant, setting forth the specific reasons for the decision and containing specific references to the pertinent provisions of this Agreement on which the decision is based. If special circumstances require that the sixty (60) day time period be extended, the Secretary will so notify the Claimant and will render the decision as soon as possible, but no later than one hundred twenty (120) days after receipt of the request for review. A failure to render a written opinion within this time period shall be deemed a denial of the Claimant's appeal and a denial of the claim. Only upon exhaustion of the administrative remedies outlined above may a Claimant or his/her duly authorized representative begin a legal action claiming benefits under the Plan.

7.1 Unsecured General Creditor Status of Employee

The payments to Participant, his Beneficiary or any other distributee hereunder shall be made from assets which shall continue for all purposes, to be a part of the general, unrestricted assets of the Company; no person shall have nor acquire any interest in any such assets by virtue of the provisions of this Agreement. The Company's obligation hereunder shall be an unfunded and unsecured promise to pay money in the future. To the extent that the Participant's Beneficiary or other distributee acquires a right to receive payments from the Company under the provisions hereof, such right shall be no greater than the right of any unsecured general creditor of the Company; no such person shall have nor require any legal or equitable right, interest or claim in or to any property or assets of the Company.

In the event that, in its discretion, the Company purchases an insurance policy or policies insuring the life of the Employee (or any other property) to allow the Company to recover the cost of providing the benefits, in whole, or in part hereunder, neither the Participant, Beneficiary or other distributee shall have nor acquire any rights whatsoever therein or in the proceeds therefrom. The Company shall be the sole owner and beneficiary of any such policy or policies and, as such shall possess and, may exercise all incidents of ownership therein. No such policy, policies or other property shall be held in any trust for a Participant, Beneficiary, or other distributee or held as collateral security for any obligation of the Company hereunder. An Employee's consent, participation in the underwriting or other steps necessary to acquire such policy or policies may be required by the Company, and, if required, shall not be a suggestion of any beneficial interest in such policy or policies to a Participant.

7.2 Action by the Company

Any action required of or permitted by the Company under this Plan shall be by resolution of the Board of Directors or its Executive Committee or of any person or persons authorized by resolution of the Board of Directors or its Executive Committee including, but not limited to, the Plan Committee.

7.3 Interests not Transferable

The interests of the Participants and their beneficiaries under the Plan are not subject to the claims of their creditors and may not be voluntarily or involuntarily transferred, assigned, alienated, or encumbered. If a Participant or beneficiary shall attempt to transfer, assign, alienate, or encumber any interest under this Plan, the Plan Committee, in its discretion, may hold or apply such interest or any part thereof to or for the benefit of the Participant, his beneficiary, his spouse, children, blood relatives, or other dependents, or any of them, in such manner and in such proportions as the Plan Committee may consider proper.

7.4 Effect on Other Benefit Plans

Amounts recited or paid under the Plan shall not be considered to be compensation for the purposes of any other plans maintained by the Company. The treatment of such amounts under any other employee benefit plan shall be determined pursuant to the provisions of such plan.

7.5 Tax Liability

The Company may withhold from any payment of benefits hereunder any taxes required to be withheld and such sum as the Company may reasonably estimate to be necessary to cover any taxes for which the Company may be liable and which may be assessed with regard to such payment.

7.6 No Trust Created

Nothing contained in this Agreement, and no action taken pursuant to its provisions by either party hereto, shall create, not be construed to create, a trust of any kind or a fiduciary relationship between the Company and the Participant, his beneficiary, or any other person. Likewise, nothing contained in this Agreement, and no action taken pursuant to its provisions prohibits the creation of any trust or other fiduciary action specifically created or action taken by the Company with the specific intent to affect this plan.

8.1 Amendment, Termination

The Company reserves the right to amend this Plan from time to time and reserves the right to terminate the Plan at any time, but any such amendment or termination shall not without the consent of the Participation have the effect of reducing or eliminating any account balances accrued, but not yet payable, under the terms of this Plan as of the date of the amendment or termination.

8.2 Payments Upon Termination

Upon termination of this Plan, the Executive Committee of the Board of Directors shall determine the date or dates of distributions from this Plan to the Participants, which date or dates shall not be later than the date or dates which the Participants, or their beneficiaries, would otherwise receive benefits hereunder. Deferral Elections shall cease to be effective prospectively as of the date determined by the Executive Committee.

IBP, inc.
DIRECTOR'S CONSENT TO ACTION
WITHOUT A MEETING OF THE
EXECUTIVE COMMITTEE

The undersigned, being all of the members of the Executive Committee of the Board of Directors of IBP, inc., a Delaware corporation ("Company"), hereby consent in writing on the adoption of this restatement of the Retirement Income Plan of IBP, inc., effective August 1, 2000.

WHEREAS, IBP, inc. (the "Company") maintains the Retirement Income Plan of IBP, inc. (the "Plan") for the benefit of its eligible employees; and

WHEREAS, pursuant to Section 8.1 of the Plan, the Company has the power to amend the Plan at any time; and

WHEREAS, it is the desire of the Company to now amend and restate the Plan as attached hereto.

NOW, THEREFORE, in consideration of the foregoing, the Plan, as attached, is hereby further amended and restated effective as August 1, 2000.

DATED this 1st day of August, 2000.

/s/ Robert L. Peterson

Robert L. Peterson

/s/ Richard L. Bond

Richard L. Bond

/s/ Eugene D. Leman

Eugene D. Leman

**AMENDMENT TO FREEZE THE
RETIREMENT INCOME PLAN
OF
IBP, Inc.**

THIS AMENDMENT is made as of this 31st day of December, 2002, by IBP, inc., a corporation duly organized and existing under the laws of the State of Delaware (the "Company").

WITNESSETH:

WHEREAS, the Company maintains the Retirement Income Plan of IBP, inc. (the "Plan"), as most recently amended and restated by indenture effective as of August 1, 2000.

WHEREAS, the Company now wishes to amend the Plan primarily to cease the accrual additional contributions under the Plan for all existing participants and to prohibit the addition of any new participants effective as of December 31, 2002.

NOW, THEREFORE, the Company does hereby amend the Plan pursuant to Section 8.1 effective as of January 1, 2003 (the "Freeze Date"), as follows:

1. By adding the following new Section 3.5, as follows:

3.5 Plan Freeze

Notwithstanding any other provision of this Article III, any person who failed to become a Participant in the Plan prior to January 1, 2003 shall not become a Participant at any time thereafter."

2. By adding the following new final sentence to Section 4.1:

"Notwithstanding any other provision of this Section 4.1, no Compensation Deferrals shall be credited to a Participant's Account with respect to any Plan Year commencing on or after January 1, 2003."

3. By adding the following new final sentence to Section 4.2:

Notwithstanding any other provision of this Section 4.2, no Matching Contributions shall be credited to a Participant's Account with respect to any Plan Year commencing on or after January 1, 2003."

4. By adding the following new final sentence to Section 4.3:

“Notwithstanding any other provision of this Section 4.3, effective January 1, 2003, a Participant’s Accounts shall be credited with notational gains, losses and/or accrued interest in accordance with Article IV of the Executive Savings Plan of Tyson Foods, Inc.”

5. By deleting Section 4.4 in its entirety and by substituting therefor the following:

“4.4 Vesting

“Notwithstanding any other provision of the Plan, a Participant who is an employee at any time on or after April 1, 2003 shall be fully vested in his Accounts”

6. By adding the following new final sentence to Section 4.5:

“Notwithstanding any other provision of this Section 4.5, effective January 1, 2003, distribution of a Participant’s Account shall be governed by the provisions of the Executive Savings Plan of Tyson Foods, Inc.”

7. By adding the following new final sentence to Section 4.6:

“Notwithstanding any other provision of this Section 4.6, effective January 1, 2003, distribution of a Participant’s Account shall be governed by the provisions of the Executive Savings Plan of Tyson Foods, Inc.”

8. By adding the following new final sentence to Article VI:

“Notwithstanding any other provision of this Article VI, with respect to any claims for benefits made under this Plan on or after January 1, 2003, the claims review procedures set forth under the Executive Savings Plan of Tyson Foods, Inc, shall apply.”

Except as specifically amended hereby, the Plan shall remain in full force and effect prior to this Amendment

IN WITNESS WHEREOF, the Company has caused this Amendment to be executed as of the day and year first above written.

IBP, inc.

By: /s/ Steve Hankins

Steve Hankins

Title: Executive Vice President and Chief
Financial Officer

TYSON FOODS, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT
AND LIFE INSURANCE PREMIUM PLAN
(AMENDED AND RESTATED AS OF MARCH 1, 2007)

TABLE OF CONTENTS

	PAGE
<u>SECTION 1 INTRODUCTION</u>	<u>1</u>
<u>SECTION 2 DEFINITIONS</u>	<u>1</u>
<u>SECTION 3 PARTICIPATION</u>	<u>9</u>
<u>SECTION 4 SERP BENEFITS</u>	<u>11</u>
<u>SECTION 5 FORMS OF SERP PAYMENT</u>	<u>13</u>
<u>SECTION 6 LIFE INSURANCE PREMIUM PAYMENTS</u>	<u>14</u>
<u>SECTION 7 ADMINISTRATION OF THE PLAN</u>	<u>14</u>
<u>SECTION 8 CERTAIN RIGHTS AND LIMITATIONS</u>	<u>15</u>
<u>SECTION 9 AMENDMENT AND TERMINATION OF THE PLAN</u>	<u>17</u>
<u>ARTICLE 10 CLAIMS REVIEW PROCEDURE</u>	<u>19</u>
<u>ARTICLE 11 ADOPTION BY AFFILIATES</u>	<u>23</u>

SECTION 1
INTRODUCTION

The Company maintains the Tyson Foods, Inc Supplemental Executive Retirement and Life Insurance Premium Plan (the "Plan") originally effective as of March 12, 2004.

The Company desires to amend the Plan to revise the eligibility provisions to narrow the class of eligible employees; to provide for the continuation of benefit accruals by those existing Participants who would not be eligible to participate in the Plan if they were hired or rehired on or after March 1, 2007 and to address and clarify the treatment of eligible employees who cease to qualify for active participation in the Plan due to the change in eligibility criteria or otherwise. and

The Company also desires to amend the Plan to comply with, and make changes permitted by, the American Jobs Creation Act of 2004 and the rules and regulations promulgated thereunder.

The Company currently intends to maintain the Plan indefinitely. The Plan provides for each Plan Sponsor to pay its respective benefits and administrative costs from its general assets. The establishment of the Plan shall not convey rights to Participants or any other person which are greater than those of the general creditors of the Plan Sponsor.

The terms and conditions of participation and benefits under the Plan are determined exclusively by the provisions of this document. In the event of any conflict between the provisions of this document and any other description of the Plan, the provisions of this document control. The provisions of this document are generally effective as of March 1, 2007, except as otherwise provided herein.

SECTION 2
DEFINITIONS

As used in this Plan, the masculine pronoun shall include the feminine and the feminine pronoun shall include the masculine unless otherwise specifically indicated. In addition, the following words and phrases as used in this Plan shall have the following meaning unless a different meaning is plainly required by the context:

2.1 "Actuarial Equivalent" means a benefit of equivalent value, when computed on the basis of the same mortality table and the rate or rates of interest and/or empirical tables. The Plan Administrator shall establish the applicable mortality table, rate of interest and/or empirical table in its sole discretion. Prior to a Change of Control, the Plan Administrator may change the table(s) and/or rate(s) of interest used in determining whether a benefit is the Actuarial Equivalent of another benefit. No Participant shall accrue a right to have any particular table or interest rate used in computing the lump sum value of his or her SERP benefit and, therefore, differences in Actuarial Equivalent computations attributable to varying table(s) and/or rate(s) of interest shall not be deemed a part of a Participant's "accrued" benefits as described in Section

9.1. Effective with a Change of Control, the table(s) and rate(s) of interest shall remain the same as those in effect immediately prior to a Change of Control.

2.2 “Affiliate” means (a) any corporation which is a member of the same controlled group of corporations (within the meaning of Code Section 414 (b)) as is a Plan Sponsor, (b) any other trade or business (whether or not incorporated) under common control (within the meaning of Code Section 414(c)) with a Plan Sponsor, (c) any other corporation, partnership or other organization which is a member of an affiliated service group (within the meaning of Code Section 414(m)) with a Plan Sponsor, and (d) any other entity required to be aggregated with a Plan Sponsor pursuant to regulations under Code Section 414(o).

2.3 “Board of Directors” means the Board of Directors of Tyson Foods, Inc.

2.4 “Change of Control” means any one of the following events occurring after March 12, 2004:

(a) the acquisition by any individual, entity or “group,” within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act (a “Person”), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of voting securities of the Company where such acquisition causes any such Person to own twenty-five percent (25%) or more of the combined voting power of the then outstanding voting securities then entitled to vote generally in the election of directors (the “Outstanding Voting Securities”); provided, however, that for purposes of this Subsection (a), the following shall not be deemed to result in a Change of Control, (i) any acquisition directly from the Company, unless such a Person subsequently acquires additional shares of Outstanding Voting Securities other than from the Company, in which case any such subsequent acquisition shall be deemed to be a Change of Control; or (ii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) a merger, consolidation, share exchange, combination, reorganization or like transaction involving the Company in which the stockholders of the Company immediately prior to such transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding capital stock of the Company or its successor immediately after such transaction;

(c) the sale or transfer (other than as security for the Company’s obligations) of more than fifty percent (50%) of the assets of the Company in any one transaction or a series of related transactions occurring within a one (1) year period in which the Company, any corporation controlled by the Company or the stockholders of the Company immediately prior to the transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding equity securities of the acquiror immediately after the transaction;

(d) the sale or transfer of more than fifty percent (50%) of the value or voting power of the issued and outstanding capital stock of the Company by the holders thereof

in any one transaction or a series of related transactions occurring within a one (1) year period in which the Company, any corporation controlled by the Company or the stockholders of the Company immediately prior to the transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding equity securities of the acquiror immediately after the transaction;

(e) within any twelve-month period the persons who were directors of the Company immediately before the beginning of such twelve-month period (the "Incumbent Directors") shall cease to constitute at least a majority of the Board of Directors; provided that no director whose initial assumption of office is in connection with an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) relating to the election of directors of the Company shall be deemed to be an Incumbent Director; or

(f) the dissolution or liquidation of the Company.

2.5 "Code" means the Internal Revenue Code of 1986 and all regulatory guidance promulgated thereunder, as the same may be amended and modified from time to time.

2.6 "Company" means Tyson Foods, Inc. and any successor thereto.

2.7 "Compensation" means the base salary paid to an Active Participant or deferred for services rendered to the Company or an Affiliate during any year in which the Participant accrues Creditable Service, including any deferrals of base salary or bonus under a 401(k) plan, deferrals under a non-qualified, defined contribution deferred compensation plan or salary reduction under a cafeteria plan of the Company or an Affiliate, plus any annual cash bonus payable to an Active Participant under a recurring bonus program applicable to one or more classes of employees. Compensation shall not include any other forms of compensation, fringe benefits or severance payments or benefits, whether characterized as such, made pursuant to any employment agreement, separation agreement, severance plan or policy or any similar arrangement, unless such agreement, plan, policy or arrangement expressly provides that the special termination or severance payments or benefits are to be included as Compensation under the Plan.

Notwithstanding the foregoing, with respect to any period of absence (during which disability benefits are being paid to the Participant under a short-term or long-term disability plan then maintained by the Company or an Affiliate) which is included as Creditable Service, the Participant's annual Compensation for purposes of the Plan during such period of absence shall be deemed to be the greater of (a) his Compensation paid for the last full calendar year of his employment immediately preceding the beginning of such absence, or (b) the actual Compensation the Participant received in the year the absence began.

2.8 "Contracted Officer" means an employee of a Plan Sponsor who has a written employment agreement in effect with the Plan Sponsor for the performance of services in a recognized officer position of the employing entity.

2.9 “Creditable Service” means:

(a) The total number of years and completed months of continuous service rendered by an Active Participant for the Company or an Affiliate while an Eligible Contracted Officer from and after January 1, 2004.

(b) Periods of authorized leaves of absence from the Company or any Affiliate credited to an Eligible Contracted Officer on or after January 1, 2004, including but not limited to leaves required to be granted pursuant to the Family and Medical Leave Act of 1993 and the Uniformed Services Employment and Reemployment Rights Act, and, notwithstanding any other provision of this Plan to the contrary, any period of an authorized leave of absence on or after January 1, 2004 credited to an Eligible Contracted Officer while disability benefits are being paid under a short-term or long-term disability plan then maintained by the Company or an Affiliate.

(c) Any prior Creditable Service under this Plan rendered by a Participant who ceases to be an Active Participant shall be disregarded, unless the prior Creditable Service is to be recognized pursuant to Section 3.5 or unless otherwise recognized by the Plan Administrator and communicated to the Participant in writing. Subject to approval by the Plan Administrator, a Participant may be granted additional years of Creditable Service for purposes of determining retirement benefits under the Plan. Additional service granted under provisions of an individual agreement between the Company or any Affiliate and a Participant or under any severance plan or policy of the Company covering the Participant shall also be included in determining Creditable Service, but only in accordance with the specific terms of such provisions.

Subject to approval by the Plan Administrator, a Participant may be granted additional years of Creditable Service for purposes of determining retirement benefits under the Plan. Additional service granted under provisions of an individual agreement between the Company or any Affiliate and a Participant or under any severance plan or policy of the Company covering the Participant shall also be included in determining Creditable Service, but only in accordance with the specific terms of such provisions.

2.10 “Disability” means a disability of a Participant which, in the opinion of the Plan Administrator, causes a Participant to be totally and permanently disabled due to sickness or injury so as to be completely unable to perform any and every duty pertaining to his occupation from a cause other than as specified below:

(a) excessive and habitual use by the Participant of drugs, intoxicants or narcotics;

(b) injury or disease sustained by the Participant while willfully and illegally participating in fights, riots, civil insurrections or while committing a felony;

(c) injury or disease sustained by the Participant diagnosed or discovered subsequent to the date of his Separation from Service; and

(d) injury or disease sustained by the Participant while working for anyone other than the Plan Sponsor or any Affiliate and arising out of such employment.

The determination of whether or not a Disability exists shall be determined by the Plan Administrator and shall be substantiated by competent medical evidence.

2.11 “ Disability Retirement Allowance ” means the SERP retirement benefits payable under Section 4.1(c) to a Participant who experiences a Separation from Service due to a Disability.

2.12 “ Early Retirement Allowance ” means the SERP retirement benefits payable under Section 4.3 to a Participant who retires prior to attaining Normal Retirement Age.

2.13 “ Eligible Contracted Officer ” means

(a) for all purposes of Plan administration from January 1, 2004 until March 1, 2007, a Contracted Officer, but only for that period of time during which his or her employment agreement was in effect; and

(b) for all purposes of Plan administration commencing on and continuing after March 1, 2007, either

(i) a Contracted Officer, but only for that period of time during which his or her employment agreement was in effect and he or she occupies an officer position in a band level of 0 through 5; or

(ii) a Grandfathered Officer, but only for that period of time during which his or her employment agreement was in effect and he or she occupies a position as a Contracted Officer

For purposes of Section 2.13(b)(ii), a Grandfathered Officer who is demoted from an officer position to a non-officer position shall not be treated as an Eligible Contracted Officer while occupying such non-officer position for any purpose.

2.14 “ ERISA ” means the Employee Retirement Income Security Act of 1974 and all regulatory guidance thereunder, as the same may be amended and modified from time to time.

2.15 “ Final Average Compensation ” means the average annual Compensation of a Participant measured over the final five (5) consecutive, whole calendar years during the Participant’s entire period of Creditable Service. If a Participant has less than five (5) consecutive, whole calendar years of Creditable Service, Final Average Compensation shall be computed over all such years.

2.16 “ Grandfathered Officer ” means a Contracted Officer who was an Active Participant immediately prior to March 1, 2007.

2.17 “LIP” means the portion of the Plan providing the life insurance premiums payment benefits described in Section 5.

2.18 “Nonforfeitable” refers only to the vested, unsecured contractual right of a Participant, if any, to benefits under this Plan. In no event, however, shall “Nonforfeitable” imply any preferred claim on, or any beneficial ownership interest in, any assets of the Plan Sponsor before those assets are paid to any Participant pursuant to the terms of the Plan. As provided in Section 8.5 below, certain events may result in the forfeiture even of Nonforfeitable benefits.

2.19 “Normal Retirement Age” means age 62.

2.20 “Normal Retirement Allowance” means the SERP retirement benefits payable under Section 4.2 to a Participant who retires on or after attaining Normal Retirement Age.

2.21 “Participant” means any Active Participant, Inactive Participant or Retired Participant.

(a) “Active Participant” means an Eligible Contracted Officer of a Plan Sponsor from the time participation in the Plan begins pursuant to Section 3.1 until the earliest of the time:

- (i) the Participant retires and is entitled to SERP retirement benefits under Section 4,
- (ii) the Participant dies or becomes subject to a Disability,
- (iii) the Participant becomes an Inactive Participant,
- (iv) the Participant experiences a Separation from Service prior to becoming entitled to SERP retirement benefits under Section 4, except as otherwise provided in Section 9.5, or
- (v) the Participant ceases to be an Active Participant by reason of an event described in Section 9.3 or 9.5.

In addition, if an Active Participant is placed on inactive employee status, as defined by the Plan Administrator from time to time under uniform and nondiscriminatory rules, and, at the date of such change in status, the Participant has a Nonforfeitable right to his or her SERP retirement benefit, the Participant will continue as an Active Participant in the Plan.

(b) “Inactive Participant” means a Participant who ceases to be an Active Participant, who has not become a Retired Participant and who either (i) continues to be an employee of the Company or an Affiliate but who, as a result of a change in status,

ceases to be an Eligible Contracted Officer or (ii) has his or her Active Participant status terminated solely by reason of Section 2.21(a)(v). A Participant who earns a Nonforfeitable right to his or her SERP retirement benefit while an Inactive Participant shall be eligible for retirement benefits in accordance with Section 4 from and after the date the SERP retirement benefit becomes Nonforfeitable. As set forth in Section 3.5, for purposes of Sections 4.2(a)(1) and 4.2(b)(1), no increase in SERP retirement benefits shall be attributed to Compensation paid or for services rendered during the period of time that a Participant is classified as an Inactive Participant.

(c) “Retired Participant” shall mean either (a) an Active Participant who has retired on or after meeting the requirements for a Normal, Early or Disability Retirement Allowance under Section 4 or (b) an Inactive Participant who met the requirements for a Normal, Early or Disability Retirement Allowance under Section 4 prior to becoming, or during his or her status as, an Inactive Participant and who subsequently retires.

2.22 “Plan” means this Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan, as from time to time amended, providing the SERP and LIP benefits described herein.

2.23 “Plan Administrator” means the person or persons appointed by the Board of Directors to administer the Plan on behalf of the Company and, in lieu of any such appointment, the administrative committee established by the Company generally responsible for the administration of the Company’s employee benefit plans.

2.24 “Plan Sponsor” means the Company and each Affiliate that has adopted the Plan with the approval of the Company.

2.25 “Separation from Service” shall mean a separation from service with the Company and its Affiliates within the meaning of Treasury Regulations Section 1.409A-1(h) and any successor guidance thereto. No Separation from Service shall occur while a Participant is on any bona fide leave of absence not in excess of six (6) months duration or, if longer, so long as the Participant’s right to reemployment is provided either by statute or contract.

2.26 “SERP” means the portion of the Plan providing the retirement benefits described in Section 4.

2.27 “Specified Employee” shall mean a Participant who is a key employee (as defined in Code Section 416(i) without regard to Code Section 416(i)(5)) of the Company (or an entity which is considered to be a single employer with the Company under Code Section 414(b) or 414(c)) at any time during the twelve (12) month period ending on December 31. Notwithstanding the foregoing, a Participant who is a key employee determined under the preceding sentence will be deemed to be a Specified Employee solely for the period of April 1 through March 31 following such December 31 or as otherwise required by Code Section 409A.

2.28 “Vesting Service” means:

(a) The total number of years and completed months of continuous service rendered by an Active Participant as an Eligible Contracted Officer and, to the extent described in Subsection (c) below, by an Inactive Participant.

(b) Vesting Service includes any periods of authorized leaves of absence from the Company or any Affiliate by a Participant in an otherwise eligible capacity, including but not limited to leaves required to be granted pursuant to the Family and Medical Leave Act of 1993 and the Uniformed Services Employment and Reemployment Rights Act, and, notwithstanding any other provision of this Plan to the contrary, any period of an authorized leave of absence while disability benefits are being paid to the Participant under a short-term or long-term disability plan then maintained by the Company or an Affiliate.

(c) The total number of years and completed months of continuous service rendered by an Inactive Participant for the Company or an Affiliate will be counted as Vesting Service under the following rules:

(i) Eligible Contracted Officer to Ineligible Contracted Officer. An Active Participant who ceases to be an Eligible Contracted Officer but who continues to be a Contracted Officer until re-qualifying as an Active Participant shall receive credit for Vesting Service while his or her status as a Contracted Officer continues. This Clause (i) does not apply to any Grandfathered Participant because a Grandfathered Participant remains an Active Participant for as long as he or she is a Contracted Officer.

(ii) Eligible Contracted Officer to Non-Officer. An Active Participant who ceases to be a Contracted Officer before re-qualifying as an Active Participant shall receive credit for Vesting Service performed for his or her prior continuous period of service as an Eligible Contracted Officer and/or an employee of the Company or an Affiliate, provided he or she returns to Contracted Officer status within five (5) years from losing that status; however, such credit shall count only for purposes of determining whether his or her SERP retirement benefits are Nonforfeitable and not for purposes of determining the amount of the SERP retirement benefit under either Section 4.2(a)(2) or Section 4.2(b)(2).

Subject to approval by the Plan Administrator, a Participant may be granted additional years of Vesting Service for purposes of determining benefits under the Plan. Additional service granted under provisions of an individual agreement between the Company or any Affiliate and a Participant or under any severance plan or policy of the Company covering the Participant shall also be included in determining Vesting Service, but only in accordance with the specific terms of such provisions.

SECTION 3
PARTICIPATION

3.1 Commencement of SERP Participation. Each Eligible Contracted Officer shall commence participation in the SERP as an Active Participant as of the later of March 12, 2004 or the effective date that the Contracted Officer becomes an Eligible Contracted Officer. Subject to Section 3.5 (in addition to any Creditable Service and corresponding Compensation recognized at the discretion of the Plan Administrator pursuant to Section 2.9), an Active Participant who ceases to qualify as an Active Participant shall recommence participation in the Plan as an Active Participant, on a prospective basis only, if the individual again satisfies the criteria for being an Active Participant.

3.2 Commencement of LIP Participation. An Active Participant is eligible for LIP benefits if he or she timely applies for and is issued a policy on his or her life of a type and by an insurer designated by the Plan Administrator effective as of the date of coverage indicated by such policy.

3.3 Termination of SERP Participation. When a Participant ceases to be an Active Participant (as defined in Section 2.21(a) hereof), he or she shall cease to be a Participant unless the Participant remains an Inactive Participant or becomes a Retired Participant. A Retired Participant shall remain a Participant until his or her date of death, unless his or her Nonforfeitable benefits are forfeited pursuant to Section 8.5.

3.4 Termination of LIP Participation. Except as provided in this Section 3.4, an Active Participant shall remain a Participant under the LIP portion of the Plan through the policy anniversary date immediately following his or her Separation from Service, unless:

- (a) his or her otherwise Nonforfeitable benefits are forfeited pursuant to Section 8.5;
- (b) the policy issued to the Participant, as contemplated by Section 3.2, is surrendered, modified or exchanged by the Participant or the Participant causes a diminution in the policy's cash surrender value by withdrawing from, or borrowing against, the policy; or
- (c) the Participant refuses or neglects to cooperate with the Company in its efforts to confirm whether any circumstances described in Section 3.4(b) exist.

When a Participant ceases to be an Active Participant but continues in the service of the Company or an Affiliate, he or she shall cease to be a Participant under the LIP portion of the Plan as of the policy anniversary date immediately following his or her change in status and shall have no rights to LIP benefits thereafter unless and until the Participant re-qualifies as an Active Participant. A Participant who ceases to qualify as an Active Participant will again become eligible for the LIP portion of the Plan no earlier than the first day of the calendar month following the completion of three (3) full calendar months from the effective date of their return to Active Participant status.

As a condition to participation, or continued participation, in the Plan, a Participant shall be required to reimburse the Company for the reimbursable portion of any premium paid on the policy issued to the Participant in connection with his or her participation in the Plan if the Participant experiences a Separation from Service within one (1) year of his or her original date of hire with the Company or any Affiliate.

3.5 Inactive Participant. For purposes of Sections 4.2(a)(1) and 4.2(b)(1), no increase in SERP retirement benefits shall be attributed to Compensation paid or for services rendered during the period of time that a Participant is classified as an Inactive Participant. An Inactive Participant who never returns to the status of an Active Participant may become a Retired Participant and receive a SERP retirement benefit only if he or she has earned a Nonforfeitable right to SERP retirement benefits prior to losing his or her status as an Active Participant or earns a Nonforfeitable right to SERP retirement benefits as an Inactive Participant by reason of being credited with additional Vesting Service pursuant to Section 2.28. In addition, any Compensation paid or services rendered during any prior period of time when an Inactive Participant was an Active Participant shall be disregarded, except as provided below:

(a) Return to Active Status. An Inactive Participant who has not earned a Nonforfeitable right to SERP retirement benefits prior to losing his or her status as an Active Participant and who returns to the status of an Active Participant may have Compensation and Creditable Service earned prior to becoming an Inactive Participant counted towards the calculation of his or her SERP retirement benefit in accordance with the following rules:

(i) Eligible Contracted Officer to Ineligible Contracted Officer. An Active Participant who ceases to be an Eligible Contracted Officer but who continues to be a Contracted Officer until re-qualifying as an Active Participant shall receive credit for Compensation earned and Creditable Service performed for his or her prior period of time as an Eligible Contracted Officer for purposes of Sections 4.2(a)(1) and 4.2(b)(1). This Clause (i) does not apply to any Grandfathered Participant because a Grandfathered Participant remains an Active Participant for as long as he or she is a Contracted Officer.

(ii) Eligible Contracted Officer to Non-Officer. An Active Participant who ceases to be a Contracted Officer before re-qualifying as an Active Participant shall receive credit for Compensation earned and Creditable Service performed for his or her prior period of time as an Eligible Contracted Officer for purposes of Sections 4.2(a)(1) and 4.2(b)(1), provided he or she returns to Eligible Contracted Officer status within five (5) years from losing that status.

(b) Special Situations. A Participant who has his or her Active Participant status terminated solely by reason of Section 2.21(a)(v) shall be subject to be subject to the general provisions of the Plan, as expressly modified by Section 9.3 or 9.5, as applicable.

3.6 Ineligibility. Notwithstanding any other provision of the Plan, the Plan Administrator may exclude any Contracted Officer from participation in the SERP and/or the LIP, with or without the consent of the Contracted Officer, and no such exclusion shall require the provision of substitute consideration to the Contracted Officer(s) so excluded.

SECTION 4 SERP BENEFITS

4.1 Nonforfeitable Right to SERP Benefits.

(a) An Active Participant who attains Normal Retirement Age, or an Inactive Participant who attains Normal Retirement Age and who is then a Contracted Officer, shall have a Nonforfeitable right to benefits under this Section 4, subject to the provisions of Section 8.5, and may retire and receive payment of a Normal Retirement Allowance under the SERP. Payment of the Normal Retirement Allowance shall commence as soon as practicable following the end of the calendar year in which the Participant actually experiences a Separation from Service on or after attaining Normal Retirement Age.

(b) An Active Participant who has attained age 55 and whose combination of age (including completed whole calendar months of age) and years of Vesting Service equal or exceed 70, or an Inactive Participant who has attained age 55 and whose combination of age (including completed whole calendar months of age) and years of Vesting Service equal or exceed 70 and who is then a Contracted Officer, shall have a Nonforfeitable right to benefits under this Section 4, subject to the provisions of Section 8.5, and may retire prior to Normal Retirement Age and receive payment of an Early Retirement Allowance under the SERP. Payment of the Early Retirement Allowance shall commence as soon as practicable following the end of the calendar year in which the Participant actually experiences a Separation from Service.

(c) An Active Participant, or an Inactive Participant who is then a Contracted Officer and, who has become subject to a Disability prior to earning a Nonforfeitable right to benefits under either Section 4.1(a) or (b) above shall have a Nonforfeitable right to benefits under this Section 4, subject to the provisions of Section 8.5, and may retire prior to Normal Retirement Age and receive payment of a Disability Retirement Allowance under the SERP. Payment of the Disability Retirement Allowance shall commence as soon as practicable following the end of the calendar year in which the Participant actually experiences a Separation from Service due to a Disability.

(d) A Participant who does not become entitled to payments pursuant to Section 4.1(a), (b) or (c) shall not be entitled to any SERP retirement benefits under the Plan.

4.2 Amount of Normal Retirement Allowance.

(a) The annual Normal Retirement Allowance under the SERP for a Participant who has a Nonforfeitable right to such an allowance pursuant to Section 4.1 and who was a Eligible Contracted Officer before January 1, 2002 shall be equal to the greater of (1) or (2) below plus (3):

(1) (i) 2% of the Participant's Final Average Compensation multiplied by the most recent five years of the Participant's Creditable Service (or if the Participant has less than five years of Creditable Service, 2% of the Participant's Final Average Compensation multiplied by the Participant's total Creditable Service); plus

(ii) if the Participant has more than five years of Creditable Service, 1% of the Participant's Final Average Compensation multiplied by the Participant's years of Creditable Service in excess of five.

(2) If the Participant has at least twenty (20) years of Vesting Service, the level, annual premium due under the life insurance policy described under Section 6.1, adjusted to the rate for such coverage charged to male, non-smokers; otherwise \$0.

(3) If the Participant has at least twenty (20) years of Vesting Service, forty-one percent (41%) of the amount determined under Section 4.2(a)(2) above; otherwise, \$0.

(b) The annual Normal Retirement Allowance under the SERP for a Participant who has a Nonforfeitable right to such an allowance pursuant to Section 4.1 and who became a Eligible Contracted Officer on or after January 1, 2002 shall be equal to the greater of (1) or (2) below plus (3):

(1) 1% of the Participant's Final Average Compensation multiplied by the Participant's years of Creditable Service.

(2) If the Participant has at least twenty (20) years of Vesting Service, the level, annual premium due under the life insurance policy described under Section 6.1, adjusted to the rate for such coverage charged to male, non-smokers; otherwise \$0.

(3) If the Participant has at least twenty (20) years of Vesting Service, forty-one percent (41%) of the amount determined under Section 4.2(b)(2) above; otherwise, \$0.

4.3 Amount of Early Retirement Allowance. The annual Early Retirement Allowance under the SERP for Participants who have a Nonforfeitable right to such an allowance pursuant to Section 4.1(b) shall be equal to the Normal Retirement Allowance determined in accordance

with Subsection 4.2 except that the portion of the formula described in Section 4.2(a)(1) or 4.2(b)(1), as applicable, shall be based on the Participant's Final Average Compensation and Creditable Service at the date of retirement and reduced so that it is the Actuarial Equivalent of the allowance that would be payable had the Participant retired at Normal Retirement Age.

4.4 Amount of Disability Retirement Allowance. The annual Disability Retirement Allowance under the SERP for Participants who have a Nonforfeitable right to such an allowance pursuant to Section 4.1(c) shall be equal to the sum of the amount described in Sections 4.2(a)(2) and 4.2(a)(3), without regard to whether the Participant has twenty (20) years of Vesting Service.

4.5 Cash Payments. If and when a Participant's SERP retirement benefits first become Nonforfeitable pursuant to Section 4.1, the Participant shall be paid a cash amount, determined by the Plan Administrator, equal to the product of (a) the additional taxes under Section 3101 of the Code arising as a result of the vesting event, multiplied by (b) any percentage from 100% to 141%, with the percentage in any particular case to be selected by the Plan Administrator in its discretion. In its sole discretion, the Plan Administrator may apply all or any portion of the cash payment provided for under this Section 4.5 to the Participant's tax withholding obligations. Any cash payment that becomes due pursuant to this Section 4.5 shall be made as soon as practicable following the date the SERP retirement benefits first become Nonforfeitable.

4.6 Restoration of Retired Participants to Service. Anything contained in this Plan to the contrary notwithstanding, if a Participant who has received or is receiving a Normal, Early or Disability Retirement Allowance again becomes an employee of the Company or any Affiliate, any retirement allowance payable under this Plan shall continue. On subsequent retirement, the retirement allowance payable to such Participant shall be based on Compensation and Creditable Service before and after the period of prior retirement, subject to the general terms and conditions set forth in the Plan.

4.7 Suspension of Certain Benefits. Notwithstanding any other provision of the Plan to the contrary, any payment of benefits due to, or on behalf of, a Participant who is a Specified Employee during the six-month period immediately following his or her Separation from Service shall be suspended and such suspended amounts shall be paid in a lump sum as soon as practicable following the expiration of such six-month period.

SECTION 5 FORMS OF SERP PAYMENT

SERP retirement benefits shall be paid annually for the life of the Retired Participant and shall cease as of the last annual payment date preceding the Participant's death. The SERP portion of the Plan pays no pre-retirement benefits and no death benefits. No person other than a Retired Participant is eligible to receive SERP retirement benefits earned by that Participant.

SECTION 6
LIFE INSURANCE PREMIUM PAYMENTS

6.1 Amount of LIP Benefit. Effective January 1, 2007, the LIP benefit is an annual amount payable during the period that the Participant is an Active Participant and is equal to the sum of (a) the amount of the annual premium due under the policy described in Section 3.2 plus (b) the amount of the annual premium due under the policy described in Section 3.2 multiplied by the tax withholding rate for supplemental wages applicable to the Participant. The face amount of the death benefit under the policy shall depend upon the Participant's band level as an Eligible Contracted Officer, as in effect on the applicable policy anniversary date of each calendar year. Any subsequent change in band level shall result in an adjustment to the policy's death benefit as soon as administratively practicable, but no later than the next policy anniversary date which is at least thirty (30) days after the effective date of the change in band level. Notwithstanding the foregoing, the Plan Administrator may adjust the death benefit face amount corresponding to one or more band levels at any time.

6.2 Payment of LIP Benefit. The amount of the LIP benefit shall be paid in cash to the Active Participant; provided, however, that the Plan Administrator, in its sole discretion, may pay a portion of the LIP benefit directly to the insurer that issued the policy described in Section 3.1. A Participant's status as an Active Participant must remain continuously in effect from the date of his or her initial commencement of participation in the Plan through the applicable policy anniversary date in order to qualify for that annual LIP benefit. The LIP benefit will be paid as soon as practicable after the applicable policy anniversary date.

6.3 Forfeiture of SERP Benefits. Notwithstanding any other provision of this Plan to the contrary, if an Active Participant forfeits the right to the continuation of LIP benefits pursuant to either Section 3.4(b) or (c), the Participant shall also forfeit that portion of his or her SERP benefits that would otherwise be payable pursuant to Section 4.2(a)(2) and (3) or 4.2(b)(2) and (3), as applicable, whether in the form of a Normal, Early or Disability Retirement Allowance.

SECTION 7
ADMINISTRATION OF THE PLAN

7.1 Rulemaking Authority. Except as otherwise specifically provided in the Plan, the Plan Administrator shall be the administrator of the Plan. The Plan Administrator shall have full authority to adopt procedural rules and to employ and rely on such legal counsel, actuaries, accountants and agents as it may deem advisable to assist in the administration of the Plan.

7.2 Discretionary Authority. The Plan Administrator shall from time to time establish rules, not contrary to the provisions of the Plan for the administration of the Plan and the transaction of its business. All elections and designations under the Plan by a Participant shall be made on forms prescribed by the Plan Administrator. The Plan Administrator shall have discretionary authority to construe the terms of the Plan and shall determine all questions arising in the administration, interpretation and application of the Plan, including, but not limited to,

those concerning eligibility for benefits and it shall not act so as to discriminate in favor of any person. All determinations of the Plan Administrator shall be conclusive and binding on all Contracted Officers, Participants and other persons, subject to the provisions of the Plan and subject to applicable law.

7.3 Records and Reports. The Plan Administrator shall furnish Participants with all disclosures now or hereafter required by ERISA or the Code. The Plan Administrator shall file, as required, the various reports and disclosures concerning the Plan and its operations as required by ERISA and by the Code, and shall be solely responsible for establishing and maintaining all records of the Plan.

7.4 Non-Exclusive Description. The statement of specific duties for a Plan Administrator in this Section is not in derogation of any other duties which a Plan Administrator has under the provisions of the Plan or under applicable law.

SECTION 8 CERTAIN RIGHTS AND LIMITATIONS

8.1 No Right to Employment. The establishment of the Plan shall not be construed as conferring any legal rights upon any employee or other person for a continuation of employment, nor shall it interfere with the rights of the Company or an Affiliate to discharge any employee and to treat such employee without regard to the effect which such treatment might have upon such employee as a Participant of the Plan.

8.2 Payments on Behalf of the Impaired. If the Plan Administrator shall find that a Participant is unable to care for his affairs because of illness, accident or is a minor, the Plan Administrator may direct that any benefit payment due such Participant, unless claim shall have been made therefor by a duly appointed legal representative, be paid to the spouse, a child, parent or other blood relative, or to a person with whom the Participant or other person resides. Any such payment so made shall be a complete discharge of the liabilities of the Plan with respect to such Participant.

8.3 Claim for Benefits. Each Participant, before any benefit shall be payable to or on behalf of such Participant, shall file with a member of the Plan Administrator at least thirty (30) days prior to the time of retirement, such information, if any, as shall be required to establish such person's rights and benefits under the Plan.

8.4 Non-Alienation. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, garnishment, attachment, encumbrance or charge, and any attempt so to do shall be void; nor shall any such benefit be in any manner liable for or subject to the debts, contract liabilities, engagements or torts of the person entitled to such benefit.

8.5 Forfeiture of Benefits Due to Misconduct. The obligation of a Plan Sponsor to make or continue payment of any benefits hereunder shall cease with respect to any Participant

who is in breach of any material term of his or her employment contract; provided, however, if no such employment contract is then in existence or, if applicable, was in existence immediately prior to the Participant's retirement, then the obligation of a Plan Sponsor to make or continue payment of any benefits hereunder shall cease with respect to any Participant who (a) at any time is convicted of a crime involving dishonesty or fraud relating to the Company or its Affiliates (b) at the time, without the Company's written consent knowingly uses or discloses any confidential or proprietary information relating to the Company or its Affiliates or (c) within one year following Separation from Service, without the Company's written consent, accepts employment with, or provides consulting services to, a principal competitor of the Company or its Affiliates.

8.6 Participant Status as General Creditor. All benefits payable under the Plan to a Participant shall be payable from the general assets of the Plan Sponsor who last employed the Participant. The Plan shall not be funded by the Company or any Affiliate. However, solely for its own convenience and the convenience of other Plan Sponsors, the Company reserves the right to provide for payment of benefits hereunder through a trust which may be irrevocable but the assets of which shall be subject to the claims of each Plan Sponsor's general creditors in the event of the Plan Sponsor's bankruptcy or insolvency, as defined in any such trust. In no event shall any Plan Sponsor be required to segregate any amount credited to any account, which shall be established merely as an accounting convenience; no Participant shall have any rights whatsoever in any specific assets of any Plan Sponsor or any trust established pursuant to this Section 8.6; no rights of any Participant hereunder shall be subject to participation, alienation, sale, transfer, assignment, pledge, garnishment, attachment or encumbrance nor to the debts, contracts, liabilities, engagements or torts of any Participant.

8.7 Withholding Obligations. When payments commence under the Plan, the Plan Sponsor shall have the right to deduct from each payment made under the Plan any required withholding taxes. The Plan Sponsor may deduct from an Active Participant's Compensation any required withholding taxes attributable to the Participant's participation in the Plan prior to the date payments commence.

8.8 Accelerated Payment of SERP Retirement Benefits. Notwithstanding any other provision of the Plan to the contrary, the Company shall cause each Plan Sponsor to make payments hereunder before such payments are otherwise due if it determines that the provisions of the Plan fail to meet the requirements of Code Section 409A and the rules and regulations promulgated thereunder; provided, however, that such payment(s) may not exceed the amount required to be included in income as a result of such failure to comply the requirements of Code Section 409A and the rules and regulations promulgated thereunder.

8.9 Establishment of Grantor Trust. Notwithstanding any other provision of the Plan to the contrary, no later than the effective date of a Change of Control under Section 2.4(b), (c), (d) or (f) and no later than thirty (30) days following the effective date of a Change of Control under Section 2.4(a) or (e), the Plan Sponsors collectively shall establish a trust as to which each Plan Sponsor is a “grantor”, within the meaning of Subpart E, Part I, Subchapter J, Chapter 1, Subtitle A of the Code. The trust so established shall contain the features set forth on Appendix A attached hereto. No action by the Board of Directors to amend the provisions of this Section 8.9 and Appendix A shall be given effect if such action is taken within sixty (60) days prior to, or at any time after, the effective date of a Change of Control.

SECTION 9
AMENDMENT AND TERMINATION OF THE PLAN

9.1 Right to Amend. Subject to the limitation described in Section 8.9, the Board of Directors may amend the Plan at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend or modify in whole or in part, any or all of the provisions of the Plan pursuant to its normal procedures; provided that no such modification or amendment shall adversely affect the SERP retirement benefits of Participants which had accrued and become Nonforfeitable under this Plan prior to the date such amendment or modification is adopted or becomes effective, whichever is later. The Board of Directors reserves the right to amend the Plan in any respect solely to comply with the provisions of Code Section 409A so as not to trigger any unintended tax consequences prior to the distribution of benefits provided herein. For purposes of this Section 9, “accrued” benefits refers to the benefits to which a Participant would be entitled, based on his Creditable Service and Compensation as of the date the determination is made.

9.2 Right to Terminate. The Board of Directors may terminate the Plan for any reason at any time provided that such termination shall not adversely affect the SERP retirement benefits of Participants which had accrued and become Nonforfeitable under the Plan prior to the date termination is adopted or made effective, whichever is later and no such termination of the Plan shall effect the termination of any grantor trust established pursuant to Section 8.9.

9.3 Effect of Plan Termination on SERP Benefits.

(a) In the event the Plan is terminated, each Participant who has met the age and service requirements to be entitled to a benefit under the SERP shall have a Nonforfeitable right to a Normal Retirement Allowance described in Section 4.2(a) or (b), as applicable, which such Participant had accrued through the date of the termination of the Plan. Except as provided in Subsection (b), SERP retirement benefits will be paid in accordance with Section 4.2 or 4.3, as applicable.

(b) Notwithstanding the provisions of Section 9.3(a), the Company may cause each Plan Sponsor to pay a lump sum Actuarial Equivalent value of any SERP retirement benefits due to Participants if the Company determines that such payment of SERP retirement benefits will not constitute an impermissible acceleration of payments under one of the exceptions provided in Treasury Regulations Section 1.409A-3(j)(4)(ix), or

any successor guidance. In such an event, payment shall be made at the earliest date permitted under such guidance.

9.4 Effect of Plan Amendment on SERP Benefits. In the event the Plan is amended or modified in whole or in part to reduce future accruals of SERP retirement benefits, the Participants affected by any such amendment or modification who have met the age and service requirements to be entitled to a SERP retirement benefit shall be treated with respect to the SERP retirement benefits that accrued through the date of such amendment or modification and were affected by such amendment or modification as if the Plan were terminated as of such date and their rights and entitlement to these benefits shall be determined under Section 9.3; provided, however, that such Participants shall be entitled to continue to accrue SERP retirement benefits after the date of such amendment or modification under such modified or amended terms of the Plan.

9.5 Effect of a Change of Control.

(a) SERP Benefits. Notwithstanding Section 4.1(d) to the contrary, in the event of a Change of Control of the Company, any person who is an Active Participant in the SERP at the time of the Change of Control who subsequently experiences a Separation from Service, other than a voluntary termination of employment as defined in Plan Section 9.6 below, or who is adversely affected by a termination of the Plan shall be deemed to have earned a minimum SERP retirement benefit equal to (i) the Normal Retirement Allowance determined under Section 4.2(a) or (b), as applicable, based upon the Participant's Final Average Compensation and Creditable Service at the date of the Change of Control; (ii) without regard to whether he or she has met the age and service requirements otherwise required to be entitled to a SERP retirement benefit; and (iii) adjusted to an Actuarial Equivalent amount in accordance with the immediately succeeding sentence. Payment of a SERP retirement benefit under this Section 9.5 shall commence as soon as practicable following the end of the calendar year in which the Participant actually experiences a Separation from Service following the Change of Control and shall be reduced so that it is the Actuarial Equivalent of the allowance that would be payable had the Participant retired at Normal Retirement Age. In lieu of the SERP retirement benefit under this Section 9.5, a Participant shall be entitled to any alternative, greater benefit under Section 4.2, 4.3 or 4.4 (or successor provisions) as may be determined under the terms of the Plan as may be in effect from time to time following the Change of Control.

(b) LIP Benefits. Notwithstanding Sections 3.4 to the contrary, each Participant who is an Active Participant immediately prior to the effective date of a Change of Control shall continue to receive the LIP benefit contemplated by Section 6.3 until the earlier of the Participant's attainment of age 62 or Separation from Service, regardless of any subsequent termination of the Plan.

9.6 Voluntary Termination of Employment. For purposes of Plan Section 9.5, a voluntary termination of employment shall mean any Separation from Service initiated by the Participant except a Separation from Service initiated after:

- (a) any substantial adverse change in position, duties, title or responsibilities;
- (b) any material reduction in base salary or, unless replaced by equivalent arrangements, any material reduction in annual bonus opportunity or pension or welfare benefit plan coverages;
- (c) any relocation required by the Plan Sponsor to an office or location more than 25 miles from the Participant's current regular office or location; or
- (d) any failure of the Plan Sponsor to obtain the agreement of a successor entity to assume the obligations set forth hereunder, provided that the successor has had actual notice of the existence of this arrangement and an opportunity to assume the Plan Sponsor's responsibilities hereunder during a period of at least 10 business days after receipt of such notice; provided that, in order for a particular event to be treated as an exception to a "voluntary termination," a Participant must assert such exception within 180 days after actual knowledge of the events giving rise thereto by giving the Plan Sponsor written notice thereof and an opportunity to cure. Notwithstanding the foregoing, in the event that any employment agreement between the Participant and a Plan Sponsor in effect at the time of such termination provides a definition of "constructive termination" or termination for "good reason" or similar terminology, such definition shall govern over the event described in this Section 9.6 to the extent that it provides additional exceptions to the events which are considered a voluntary termination.

ARTICLE 10
CLAIMS REVIEW PROCEDURE

10.1 Notice of Denial. If a Participant is denied a claim for benefits under the Plan, the Plan Administrator shall provide to the claimant written notice of the denial within ninety (90) days (forty-five (45) days with respect to a denial of any claim for benefits due to the Participant's Disability) after the Plan Administrator receives the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall the extension exceed a period of ninety (90) days (thirty (30) days with respect to a claim for benefits due to the Participant's Disability) from the end of such initial period. With respect to a claim for benefits due to the Participant's Disability, an additional extension of up to thirty (30) days beyond the initial 30-day extension period may be required for processing the claim. In such event, written notice of the extension shall be furnished to the claimant within the initial 30-day extension period. Any extension notice shall indicate the special circumstances requiring the extension of time, the date by which the Plan Administrator expects to render the final decision, the standards on which entitlement to benefits are based, the unresolved issues that prevent a decision on the claim and the additional information needed to resolve those issues.

10.2 Contents of Notice of Denial. If a Participant is denied a claim for benefits under a Plan, the Plan Administrator shall provide to such claimant written notice of the denial which shall set forth:

- (a) the specific reasons for the denial;
- (b) specific references to the pertinent provisions of the Plan on which the denial is based;
- (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
- (d) an explanation of the Plan's claim review procedures, and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Sections 502(a) of ERISA following an adverse benefit determination on review;
- (e) in the case of a claim for benefits due to a Participant's Disability, if an internal rule, guideline, protocol or other similar criterion is relied upon in making the adverse determination, either the specific rule, guideline, protocol or other similar criterion; or a statement that such rule, guideline, protocol or other similar criterion was relied upon in making the decision and that a copy of such rule, guideline, protocol or other similar criterion will be provided free of charge upon request; and
- (f) in the case of a claim for benefits due to a Participant's Disability, if a denial of the claim is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment for the denial, an explanation applying the terms of the Plan to the claimant's medical circumstances or a statement that such explanation will be provided free of charge upon request.

10.3 Right to Review. After receiving written notice of the denial of a claim, a claimant or his representative shall be entitled to:

- (a) request a full and fair review of the denial of the claim by written application to the Plan Administrator (or Appeals Fiduciary in the case of a claim for benefits payable due to a Participant's Disability);
- (b) request, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim;
- (c) submit written comments, documents, records, and other information relating to the denied claim to the Plan Administrator or Appeals Fiduciary, as applicable; and

(d) a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

10.4 Application for Review.

(a) If a claimant wishes a review of the decision denying his claim to benefits under the Plan, other than a claim described in Subsection (b) of this Section 10.4, he must submit the written application to the Plan Administrator within sixty (60) days after receiving written notice of the denial.

(b) If the claimant wishes a review of the decision denying his claim to benefits under the Plan due to a Participant's Disability, he must submit the written application to the Appeals Fiduciary within one hundred eighty (180) days after receiving written notice of the denial. With respect to any such claim, in deciding an appeal of any denial based in whole or in part on a medical judgment (including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate), the Appeals Fiduciary shall

(i) consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment; and

(ii) identify the medical and vocational experts whose advice was obtained on behalf of the Plan in connection with the denial without regard to whether the advice was relied upon in making the determination to deny the claim.

Notwithstanding the foregoing, the health care professional consulted pursuant to this Subsection (b) shall be an individual who was not consulted with respect to the initial denial of the claim that is the subject of the appeal or a subordinate of such individual.

10.5 Hearing. Upon receiving such written application for review, the Plan Administrator or Appeals Fiduciary, as applicable, may schedule a hearing for purposes of reviewing the claimant's claim, which hearing shall take place not more than thirty (30) days from the date on which the Plan Administrator or Appeals Fiduciary received such written application for review.

10.6 Notice of Hearing. At least ten (10) days prior to the scheduled hearing, the claimant and his representative designated in writing by him, if any, shall receive written notice of the date, time, and place of such scheduled hearing. The claimant or his representative, if any, may request that the hearing be rescheduled, for his convenience, on another reasonable date or at another reasonable time or place.

10.7 Counsel. All claimants requesting a review of the decision denying their claim for benefits may employ counsel for purposes of the hearing.

10.8 Decision on Review. No later than sixty (60) days (forty-five (45) days with respect to a claim for benefits due to the Participant's Disability) following the receipt of the written application for review, the Plan Administrator or the Appeals Fiduciary, as applicable, shall submit its decision on the review in writing to the claimant involved and to his representative, if any, unless the Plan Administrator or Appeals Fiduciary determines that special circumstances (such as the need to hold a hearing) require an extension of time, to a day no later than one hundred twenty (120) days (ninety (90) days with respect to a claim for benefits due to the Participant's Disability) after the date of receipt of the written application for review. If the Plan Administrator or Appeals Fiduciary determines that the extension of time is required, the Plan Administrator or Appeals Fiduciary shall furnish to the claimant written notice of the extension before the expiration of the initial sixty (60) day (forty-five (45) days with respect to a claim for benefits due to the Participant's Disability) period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator or Appeals Fiduciary expects to render its decision on review. In the case of a decision adverse to the claimant, the Plan Administrator or Appeals Fiduciary shall provide to the claimant written notice of the denial which shall include:

- (a) the specific reasons for the decision;
- (b) specific references to the pertinent provisions of the Plan on which the decision is based;
- (c) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- (d) an explanation of the Plan's claim review procedures, and the time limits applicable to such procedures, including a statement of the claimant's right to bring an action under Section 502(a) of ERISA following the denial of the claim upon review;
- (e) in the case of a claim for benefits due to the Participant's Disability, if an internal rule, guideline, protocol or other similar criterion is relied upon in making the adverse determination, either the specific rule, guideline, protocol or other similar criterion; or a statement that such rule, guideline, protocol or other similar criterion was relied upon in making the decision and that a copy of such rule, guideline, protocol or other similar criterion will be provided free of charge upon request;
- (f) in the case of a claim for benefits due to a Participant's Disability, if a denial of the claim is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment for the denial, an explanation applying the terms of the Plan to the claimant's medical circumstances or a statement that such explanation will be provided free of charge upon request; and

(g) in the case of a claim for benefits due to a Participant's Disability, a statement regarding the availability of other voluntary alternative dispute resolution options.

ARTICLE 11
ADOPTION BY AFFILIATES

Any Affiliate may, in the future, adopt this Plan provided that proper action is taken by the Board of Directors of such Affiliate and the participation of such Affiliate is approved by the Board of Directors. The administrative powers and control of the Company, as provided in this Plan, shall not be deemed diminished under this Plan by reason of the participation of any Affiliate and the administrative powers and control granted hereunder to the Plan Administrator shall be binding upon any Affiliate adopting this Plan. Each Affiliate adopting this Plan shall have the obligation to pay the benefits to its employees hereunder and no other Affiliate shall have such obligation and any failure by a particular Affiliate to live up to its obligations under this Plan shall have no effect on any other Affiliate. Any Affiliate may discontinue this Plan at any time by proper action of its Board of Directors subject to the provisions of Section 9.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company has caused this instrument to be executed as of August 13, 2007.

TYSON FOODS, INC.

By: /s/ Wade Miquelon

Title: Executive Vice President and Chief
Financial Officer

ATTEST:

By: /s/ R. Read Hudson

Title: Secretary

APPENDIX A

Mandatory Features of Grantor Trust

1. The trust shall be immediately funded by the Plan Sponsors, to the extent of their proportionate shares, with cash or cash equivalents in an amount equal to the present value Actuarial Equivalent of unpaid SERP benefits accrued in favor of Participants determined as of the immediately preceding December 31st.
2. Within thirty (30) days after each subsequent December 31st, the Plan Sponsors shall make additional contributions, to the extent of their proportionate shares, to the trust in an amount equal to the change in the present value Actuarial Equivalent of unpaid SERP benefits accrued in favor of Participants as of that December 31st when compared to the immediately preceding December 31st.
3. The factors used in determining the Actuarial Equivalent of unpaid SERP benefits for all required funding contributions to the trust shall be the same mortality and/or empirical table(s) and rate(s) of interest as in use by the Plan Administrator six (6) months prior to the effective date of the Change of Control.
4. The Plan Sponsors also shall fund and maintain a separate reserve under the trust from which the trustee shall charge its expenses. The reserve shall be maintained at a level of no less than \$50,000.
5. All portions of the trust shall be irrevocable and trust funds may only be used to provide for the payment of SERP benefits to Participants, to pay the expenses of the trustee and to satisfy the claims of the creditors of a Plan Sponsor in the event of insolvency; provided, however, that in event of an insolvency, only the trust funds attributable to the insolvent Plan Sponsor shall be subject to the claims of the creditors of that Plan Sponsor.
6. The trustee shall have the sole discretionary authority to invest the trust funds and shall do so as if the trustee were subject to the provisions of Part 4, Title 1 of ERISA.
7. The trust shall provide a mechanism for Participants to make a claim for payment of SERP benefits directly to the trustee and the trustee shall be granted the authority to approve payments of SERP benefits to a claiming Participant provided adequate evidence of entitlement to the benefit is demonstrated by the Participant.
8. The initial trustee and any successor trustee appointed to serve as trustee of the trust shall be a bank that is authorized to exercise trust powers and has a capital of at least \$250,000,000.
9. The actual provisions of the trust agreement shall be in such form as negotiated between the Plan Sponsors and the trustee; provided, however, that no such provisions shall contradict or otherwise diminish the substance of the features of the trust described hereinabove.

**FIRST AMENDMENT TO THE
TYSON FOODS, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT
AND LIFE INSURANCE PREMIUM PLAN**

THIS FIRST AMENDMENT is made on this 24th day of September, 2007, by TYSON FOODS, INC., a Delaware corporation (the "Company").

W I T N E S S E T H :

WHEREAS, the Company maintains the Tyson Foods, Inc Supplemental Executive Retirement and Life Insurance Premium Plan (the "Plan") originally effective as of March 12, 2004 and as most recently amended and restated as of March 1, 2007;

WHEREAS, the Company desires to amend the Plan to provide the Plan Administrator (as defined therein) with the discretion to reduce the minimum age requirement necessary to qualify selected participants for the receipt of an Early Retirement Allowance (as defined therein); and

WHEREAS, this First Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

NOW, THEREFORE, the Company does hereby amend the Plan, effective as of the date first set forth above, by deleting Section 4.1(b) in its entirety and by substituting therefor the following:

"(b) An Active Participant who has attained age 55 (or any earlier age as may be authorized in writing by the Plan Administrator in its sole discretion on a case-by-case basis) and whose combination of age (including completed whole calendar months of age) and years of Vesting Service equal or exceed 70, or an Inactive Participant who has attained age 55 (or any earlier age as may be authorized in writing by the Plan Administrator in its sole discretion on a case-by-case basis) and whose combination of age (including completed whole calendar months of age) and years of Vesting Service equal or exceed 70 and who is then a Contracted Officer, shall have a Nonforfeitable right to benefits under this Section 4, subject to the provisions of Section 8.5, and may retire prior to Normal Retirement Age and receive payment of an Early Retirement Allowance under the SERP. Payment of the Early Retirement Allowance shall commence as soon as practicable following the end of the calendar year in which the Participant actually experiences a Separation from Service."

Except as specifically amended hereby, the Plan shall remain in full force and effect prior to this First Amendment.

IN WITNESS WHEREOF, the Company has caused this First Amendment to be executed on the day and year first above written

TYSON FOODS, INC.

By: /s/ Wade Miquelon

Title: Executive Vice President and Chief

Financial Officer

**SECOND AMENDMENT TO THE
TYSON FOODS, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT
AND LIFE INSURANCE PREMIUM PLAN**

THIS SECOND AMENDMENT is made on this 29th day of February, 2008, by TYSON FOODS, INC., a Delaware corporation (the "Company").

W I T N E S S E T H :

WHEREAS, the Company maintains the Tyson Foods, Inc Supplemental Executive Retirement and Life Insurance Premium Plan (the "Plan") originally effective as of March 12, 2004 and as most recently amended and restated as of March 1, 2007;

WHEREAS, the Company desires to amend the Plan to provide the Plan Administrator (as defined therein) with the discretion in limited circumstances to waive the requirement that a participant be employed as of a policy anniversary date in order to receive a life insurance premium payment benefit for the calendar year containing that policy anniversary date;

WHEREAS, the Company also desires to amend the Plan to clarify the timing of the commencement of the supplemental retirement benefits earned under the Plan; and

WHEREAS, this Second Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

NOW, THEREFORE, the Company does hereby amend the Plan, effective as of January 1, 2008, as follows:

1. By deleting the last sentences of Subsections (a), (b) and (c) of Section 4.1 in their entirety and by adding a new Subsection (e) to Section 4.1 as follows:

"(e) Payment of the Normal Retirement Allowance, Early Retirement Allowance or Disability Retirement Allowance, as applicable, to a Participant who is otherwise entitled to such an allowance shall commence within the first ninety (90) days of the calendar year immediately following the calendar year in which the Participant actually experiences a Separation from Service and successive payments shall be made during the same ninety (90)-day period in each subsequent calendar year during the Participant's lifetime."

2. By deleting Section 4.5 in its entirety and by substituting therefor the following:

"4.5 FICA Payments . If and when a Participant's SERP retirement benefits first become Nonforfeitable pursuant to Section 4.1, the Participant shall be paid a cash amount, determined by the Plan Administrator, equal to the product of (a) the additional taxes under Section 3101 of the Code arising as a result of the vesting event, multiplied by (b) any percentage from 100% to 141%, with the percentage in any particular case to be selected by the Plan Administrator in its discretion. In its sole discretion, the Plan

Administrator may apply all or any portion of the cash payment provided for under this Section 4.5 to the Participant's tax withholding obligations. Any cash payment that becomes due pursuant to this Section 4.5 shall be made by March 15th of the calendar year following the calendar year the SERP retirement benefits first become Nonforfeitable."

3. By deleting Section 4.7 in its entirety and by substituting therefor the following:

"4.7 Suspension of Certain Benefits. Notwithstanding any other provision of the Plan to the contrary, any payment of benefits due to, or on behalf of, a Participant who is a Specified Employee during the six-month period immediately following his or her Separation from Service shall be suspended and such suspended amounts shall be paid within fifteen (15) business days after the expiration of such six-month period."

4. By deleting Section 6.2 in its entirety and by substituting therefor the following:

"6.2 Payment of LIP Benefit. The amount of the LIP benefit shall be paid in cash to the Active Participant; provided, however, that the Plan Administrator, in its sole discretion, may pay a portion of the LIP benefit directly to the insurer that issued the policy described in Section 3.1. A Participant's status as an Active Participant must remain continuously in effect from the date of his or her initial commencement of participation in the Plan through the applicable policy anniversary date in order to qualify for that annual LIP benefit; provided, however, that the Plan Administrator, in its sole discretion, may elect to pay an additional annual LIP benefit for a year on behalf of a Participant who has a Nonforfeitable right to SERP benefits as of his or her Separation from Service if such Separation from Service occurs prior to the applicable policy anniversary date for that year. The LIP benefit will be paid within ninety (90) days following the applicable policy anniversary date."

5. By deleting the next to last sentence in Section 9.5(a) in its entirety and by substituting therefor the following:

"Payment of a SERP retirement benefit under this Section 9.5 shall commence within the first ninety (90) days of the calendar year immediately following the calendar year in which the Participant actually experiences a Separation from Service following the Change of Control and successive payments shall be made during the same ninety (90)-day period in each subsequent calendar year during the Participant's lifetime. Each payment shall be reduced so that it is the Actuarial Equivalent of the allowance that would be payable had the Participant retired at Normal Retirement Age."

Except as specifically amended hereby, the Plan shall remain in full force and effect prior to this Second Amendment.

IN WITNESS WHEREOF, the Company has caused this Second Amendment to be executed on the day and year first above written

TYSON FOODS, INC.

By: /s/ Wade Miquelon

Title: Executive Vice President and Chief
Financial Officer

**RETIREMENT SAVINGS PLAN
OF
TYSON FOODS, INC.**

THIS INDENTURE is made as of the 3rd day of November, 2008, by TYSON FOODS, INC, a corporation duly organized and existing under the laws of the State of Delaware.

WITNESSETH:

WHEREAS, the Primary Sponsor established by indenture originally effective as of October 1, 1987, the Retirement Savings Plan of Tyson Foods, Inc. (the "Plan"), which was last amended by indenture dated January 1, 1993; and

WHEREAS, the Primary Sponsor previously amended and restated the Plan primarily to comply with and make changes permitted by the provisions of the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 by indenture dated December 13, 1999, generally effective as of January 1, 1997; and

WHEREAS, the Primary Sponsor wishes to amend and restate the Plan primarily to consolidate amendments made subsequent to the last amendment and restatement of the Plan; to comply with and make other changes permitted by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"); to reflect final regulations issued under Section 415 of the Code and other regulatory developments; to make certain changes required or permitted by the Pension Protection Act of 2006 ("PPA"); and to make certain other miscellaneous changes; and

WHEREAS, the Plan is intended to be a profit sharing plan within the meaning of Treasury Regulations Section 1.401-1(b)(1)(ii) and also contains a cash or deferred arrangement as described in Section 401(k) of the Internal Revenue Code of 1986; and

WHEREAS, the Plan is intended to satisfy the safe harbor requirements of Code Section 401(k)(12) and Code Section 401(m)(11); and

WHEREAS, the provisions of the Plan, as amended and restated herein, shall apply to Plan Years beginning after January 1, 2008, except to the extent the provisions are required to apply at an earlier date or to any other participants to comply with applicable law;

NOW, THEREFORE, the Primary Sponsor does hereby amend and restate the Plan in its entirety, generally effective as of January 1, 2008, except as otherwise provided herein, to read as follows:

**RETIREMENT SAVINGS PLAN
OF
TYSON FOODS, INC.**

Page

<u>SECTION 1 DEFINITIONS</u>	<u>1</u>
<u>SECTION 2 ELIGIBILITY</u>	<u>13</u>
<u>SECTION 3 CONTRIBUTIONS</u>	<u>14</u>
<u>SECTION 4 ALLOCATIONS AND INVESTMENT OF TRUST ASSETS</u>	<u>18</u>
<u>SECTION 5 PLAN LOANS</u>	<u>20</u>
<u>SECTION 6 IN-SERVICE WITHDRAWALS</u>	<u>22</u>
<u>SECTION 7 PAYMENT OF BENEFITS ON TERMINATION OF EMPLOYMENT</u>	<u>24</u>
<u>SECTION 8 PAYMENT OF BENEFITS OF RETIREMENT</u>	<u>26</u>
<u>SECTION 9 DEATH BENEFITS</u>	<u>27</u>
<u>SECTION 10 GENERAL RULES ON DISTRIBUTIONS</u>	<u>27</u>
<u>SECTION 11 ADMINISTRATION OF THE PLAN</u>	<u>28</u>
<u>SECTION 12 CLAIM REVIEW PROCEDURE</u>	<u>31</u>
<u>SECTION 13 INCOMPETENT DISTRIBUTEE AND UNCLAIMED PAYMENTS</u>	<u>34</u>
<u>SECTION 14 PROHIBITION AGAINST DIVERSION</u>	<u>36</u>
<u>SECTION 15 LIMITATION OF RIGHTS</u>	<u>36</u>
<u>SECTION 16 AMENDMENT TO OR TERMINATION OF THE PLAN AND THE TRUST</u>	<u>36</u>
<u>SECTION 17 ADOPTION OF PLAN BY AFFILIATES</u>	<u>38</u>
<u>SECTION 18 QUALIFICATION AND RETURN OF CONTRIBUTIONS</u>	<u>38</u>
<u>SECTION 19 INCORPORATION OF SPECIAL LIMITATIONS</u>	<u>39</u>
<u>APPENDIX A LIMITATION ON ALLOCATIONS</u>	<u>A-1</u>
<u>APPENDIX B TOP-HEAVY PROVISIONS</u>	<u>B-1</u>
<u>APPENDIX C SPECIAL NONDISCRIMINATION RULES</u>	<u>C-1</u>
<u>APPENDIX D FROZEN BENEFIT DISTRIBUTION RULES</u>	<u>D-1</u>
<u>APPENDIX E MINIMUM DISTRIBUTION REQUIREMENTS</u>	<u>E-1</u>

SECTION 1
DEFINITIONS

Wherever used herein, the masculine pronoun shall be deemed to include the feminine, and the singular to include the plural, unless the context clearly indicates otherwise and the following words and phrases shall, when used herein, have the meanings set forth below:

1.1 “Account” means a Participant’s aggregate balance in the following accounts, as adjusted pursuant to the Plan as of any given date:

(a) “Salary Deferral Contribution Account” which shall reflect a Participant’s interest in contributions made by a Plan Sponsor under Plan Section 3.1.

(b) “Employer Contribution Account” which shall reflect a Participant’s interest in matching contributions made by a Plan Sponsor under Plan Section 3.2.

(c) “Stock Match Account” which shall reflect a Participant’s interest in contributions made by a Plan Sponsor under Plan Section 3.3.

(d) “After-Tax Contribution Account” which shall reflect a Participant’s interest in after-tax contributions previously made by a Participant to the Fund or transferred to the Plan in a trust-to-trust transfer.

(e) “Rollover Account” which shall reflect a Participant’s interest in Rollover Amounts. Notwithstanding the foregoing, if the Plan accepts any Rollover Amounts that are not includable in the gross income of the Participant (determined without regard to the rollover) and are transferred to the Plan in a direct trustee-to-trustee transfer, it shall separately account for such amounts and earnings and losses thereon.

The Plan Administrator shall also maintain such additional subaccounts as it determines necessary or desirable to reflect trust-to-trust transfers (other than Rollover Amounts), including, but not limited to, the mergers of other tax-qualified retirement plans with and into the Plan. In addition, the Plan Administrator may allocate the interest of a Participant in any funds transferred to the Plan in any trust-to-trust transfer (other than Rollover Amounts) among the above accounts as the Plan Administrator determines best reflects the interest of the Participant.

1.2 “Affiliate” means (a) any corporation which is a member of the same controlled group of corporations (within the meaning of Code Section 414 (b)) as is a Plan Sponsor, (b) any other trade or business (whether or not incorporated) under common control (within the meaning of Code Section 414(c)) with a Plan Sponsor, (c) any other corporation, partnership or other organization which is a member of an affiliated service group (within the meaning of Code Section 414(m)) with a Plan Sponsor, and (d) any other entity required to be aggregated with a Plan Sponsor pursuant to regulations under Code Section 414(o). Notwithstanding the foregoing, for purposes of applying the limitations set forth in Appendix A and for purposes of determining Annual Compensation under Appendix A, the references to Code Sections 414(b) and (c) above shall be as modified by Code Section 415(h).

1.3 “**Annual Compensation**” means wages within the meaning of Code Section 3401(a) (for purposes of income tax withholding at the source) and all other payments of compensation to an Employee by a Plan Sponsor and Affiliates (in the course of the entity’s trade or business) during a Plan Year for which the Plan Sponsor or Affiliate, as applicable, is required to furnish the Employee a written statement as required to be reported under Code Sections 6041(d), 6051(a)(3) and 6052 (but without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in Code Section 3401(a)(2)). Annual Compensation in excess of the Annual Compensation Limit shall be disregarded for all purposes under the Plan except for purposes of determining who are Highly Compensated Employees. Notwithstanding the above, Annual Compensation shall be determined as follows:

- (a) (1) for purposes of determining, with respect to each Plan Sponsor, the amount of contributions made by or on behalf of an Employee under Plan Section 3 and allocations under Plan Section 4, and
- (2) for purposes of applying the provisions of Appendix C hereto for such Plan Years as the Secretary of the Treasury may allow,

Annual Compensation shall only include amounts received for the portion of the Plan Year during which the Employee was a Participant;

(b) for all purposes under the Plan, Annual Compensation shall not include reimbursements or other expense allowances, cash and noncash fringe benefits, moving expense allowances, deferred compensation, welfare benefits, and amounts realized from the exercise of non-qualified stock options or when restricted stock (or property) held by an employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(c) in determining the amount of contributions under Plan Section 3 (other than Section 3.3) and allocations under Plan Section 4 (other than Section 4.1(b)) made by or on behalf of an Employee, Annual Compensation shall not include (1) bonus compensation, except annual bonus compensation of only those Participants who are not eligible to participate in the Executive Savings Plan of Tyson Foods, Inc. (or any successor plan) and other regularly scheduled bonus payments, (2) special non-recurring forms of remuneration; and (3) employer contributions under the Tyson Foods, Inc. Employee Stock Purchase Plan;

(d) for all purposes under the Plan, Annual Compensation shall include any amount which would have been paid during a Plan Year, but was contributed by a Plan Sponsor on behalf of an Employee pursuant to a salary reduction agreement which is not includable in the gross income of the Employee under Section 125, 132(f)(4), 402(g)(3), or 457 of the Code;

(e) notwithstanding the provisions of Subsection (c), if for any Plan Year the compensation percentage for Highly Compensated Employees exceeds by more than a de minimis amount the compensation percentage for Participants who are not Highly Compensated Employees, then the items of Annual Compensation described in Subsection (c) above shall be included as part of Annual Compensation for purposes of determining Plan Sponsor contributions made to Stock Match Accounts; and

(f) for purposes of applying the annual addition limits in Appendix A, Annual Compensation:

(1) shall be measured by the limitation year;

(2) shall include compensation paid following a severance from employment if such compensation is for services during or outside the Employee's regular working hours, commissions, bonuses, or other similar payments and the compensation would have been paid to the Employee prior to severance from employment if the Employee had continued in employment with the Plan Sponsor or an Affiliate, in accordance with Treasury Regulations Section 1.415(c)-2(e)(3)(ii);

(3) shall include payments for unused accrued bona fide sick, vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued;

(4) shall include compensation received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with a Plan Sponsor and only to the extent that the payment is includable in the Employee's gross income;

(5) shall not include any other post-severance from employment compensation;

(6) shall include payments to an individual who does not currently perform services for a Plan Sponsor by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for a Plan Sponsor rather than entering qualified military service; and

(7) shall include compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).

1.4 “Annual Compensation Limit” means \$230,000 (for the 2008 Plan Year), which amount may be adjusted in subsequent Plan Years based on changes in the cost of living as announced by the Secretary of the Treasury. If a determination period consists of fewer than twelve months, the Annual Compensation Limit shall be multiplied by a fraction, the numerator

of which is the number of months in the determination period and the denominator of which is twelve.

1.5 “Appeals Fiduciary” means an individual or group of individuals appointed to review appeals of claims for benefits payable due to a Participant’s Disability made pursuant to Plan Section 12.4.

1.6 “Beneficiary” means the person or trust that a Participant designated most recently in a manner acceptable to the Plan Administrator; provided, however, that if the Participant has failed to make a designation, no person designated is alive, no trust has been established, or no successor Beneficiary has been designated who is alive, the term “Beneficiary” means (a) the Participant’s spouse or (b) if no spouse is alive, the deceased Participant’s estate. Notwithstanding the preceding sentence, the spouse of a married Participant shall be his Beneficiary unless that spouse has consented in writing to the designation by the Participant of some other person or trust and the spouse’s consent acknowledges the effect of the designation and is witnessed by a notary public or a Plan representative. A Participant may change his designation at any time. However, a Participant may not change his designation without further consent of his spouse under the terms of the preceding sentence unless the spouse’s consent permits designation of another person or trust without further spousal consent and acknowledges that the spouse has the right to limit consent to a specific beneficiary and that the spouse voluntarily relinquishes this right. Notwithstanding the above, the spouse’s consent shall not be required if the Participant establishes to the satisfaction of the Plan Administrator that the spouse cannot be located, if the Participant has a court order indicating that he is legally separated or has been abandoned (within the meaning of local law) unless a “qualified domestic relations order” (as defined in Code Section 414(p)) provides otherwise, or if there are other circumstances as the Secretary of the Treasury prescribes. If the spouse is legally incompetent to give consent, consent by the spouse’s legal guardian shall be deemed to be consent by the spouse. If, subsequent to the death of a Participant, the Participant’s Beneficiary dies while entitled to receive benefits under the Plan, the successor Beneficiary, if any, or the Beneficiary listed under Subsection (a) or, if no spouse is alive, Subsection (b) shall be the Beneficiary.

1.7 “Board of Directors” means the Board of Directors or other governing body of the Primary Sponsor.

1.8 “Break in Service” means the failure of an Employee, in connection with a termination of employment, to complete a twelve-consecutive-month period beginning on a Severance Date or anniversary thereof during which the Employee fails to perform an Hour of Service. Notwithstanding the foregoing, the absence from employment at anytime during a Plan Year by reason of service in the armed forces of the United States shall not cause a Break in Service during a Plan Year if such Employee is reemployed by the Plan Sponsor within four months after his discharge or release from such service in the armed forces.

1.9 “Code” means the Internal Revenue Code of 1986, as amended.

1.10 “Deferral Amount” means a contribution of a Plan Sponsor on behalf of a Participant pursuant to Plan Section 3.1.

1.11 “Direct Rollover” means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

1.12 “Disability” means a disability of a Participant which, in the opinion of the Plan Administrator, causes a Participant to be totally and permanently disabled due to sickness or injury so as to be completely unable to perform any and every duty pertaining to his occupation from a cause other than as specified below:

- (a) excessive and habitual use by the Participant of drugs, intoxicants or narcotics;
- (b) injury or disease sustained by the Participant while willfully and illegally participating in fights, riots, civil insurrections or while committing a felony;
- (c) injury or disease sustained by the Participant while serving in any armed forces;
- (d) injury or disease sustained by the Participant diagnosed or discovered subsequent to the date of his termination of employment;
- (e) injury or disease sustained by the Participant while working for anyone other than the Plan Sponsor or any Affiliate and arising out of such employment; and
- (f) injury or disease sustained by the Participant as a result of an act of war, whether or not such act arises from a formally declared state of war.

The determination of whether or not a Disability exists shall be determined by the Plan Administrator and shall be substantiated by competent medical evidence.

1.13 “Distributee” means an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse and the Employee’s or former Employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order (as defined in Code Section 414(p)), are Distributees with regard to the interest of the spouse or former spouse. Effective for distributions made on and after January 1, 2008, a non-spouse Beneficiary of a deceased Participant who is either an individual or an irrevocable trust, where the beneficiaries of such trust are identifiable and the trustee provides the Plan Administrator with a final list of trust beneficiaries or a copy of the trust document by October 31 of the year following the Participant’s death, shall be a Distributee with regard to the interest of the deceased Participant, but only if the Eligible Rollover Distribution is transferred in a direct trustee-to-trustee transfer to an Eligible Retirement Plan which is an individual retirement account described in Code Section 408(a) or an individual retirement account described in Code Section 408(b) (other than an endowment contract).

1.14 “Elective Deferrals” means, with respect to any taxable year of the Participant, the sum of

(a) any Deferral Amounts;

(b) any contributions made by or on behalf of a Participant under any other qualified cash or deferred arrangement as defined in Code Section 401(k), whether or not maintained by a Plan Sponsor, to the extent such contributions are not or would not, but for Code Section 402(g)(1), be included in the Participant's gross income for the taxable year; and

(c) any other contributions made by or on behalf of a Participant pursuant to Code Section 402(g)(3).

1.15 "Eligibility Service" means the completion of a twelve-consecutive-month period beginning on the date on which the Employee first performs an Hour of Service upon his employment or reemployment or any anniversary thereof without reaching a Severance Date; provided, however, if an Employee quits, retires or is discharged and then performs an Hour of Service within twelve months of his Severance Date, then such period of severance shall be taken into account in calculating Eligibility Service.

1.16 "Eligible Employee" means any Employee of a Plan Sponsor other than an Employee who is (a) covered by a collective bargaining agreement between a union and a Plan Sponsor, provided that retirement benefits were the subject of good faith bargaining, unless the collective bargaining agreement provides for participation in the Plan, (b) a leased employee within the meaning of Code Section 414(n)(2), (c) deemed to be an Employee of a Plan Sponsor pursuant to regulations under Code Section 414(o), or (d) a non-resident alien. In addition, no person who is initially classified by a Plan Sponsor as an independent contractor for federal income tax purposes shall be regarded as an Eligible Employee for that period, regardless of any subsequent determination that any such person should have been characterized as a common law employee of the Plan Sponsor for the period in question. For purposes of this Section 1.16 and Section 1.19 below, an Employee shall be deemed to be a "leased employee within the meaning of Code Section 414(n)(2)" if the individual is a person (other than an Employee of the recipient) who, pursuant to an agreement between the recipient and any other person, has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)), on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control of the service recipient.

1.17 "Eligible Retirement Plan" means any of the following that will accept a Distributee's Eligible Rollover Distribution:

(a) an individual retirement account described in Code Section 408(a);

(b) an individual retirement annuity described in Code Section 408(b) (other than an endowment contract);

(c) an annuity plan described in Code Section 403(a) or an annuity contract described in Code Section 403(b), unless the Distributee is a non-spouse Beneficiary of a deceased Participant;

(d) a qualified trust described in Code Section 401(a), unless the Distributee is a non-spouse Beneficiary of a deceased Participant; or

(e) an eligible plan under Code Section 457(b) which is maintained by a state or political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, unless the Distributee is a non-spouse Beneficiary of a deceased Participant.

Effective for distributions after December 31, 2005, If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account (as defined in Code Section 402A), an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

1.18 “Eligible Rollover Distribution” means any distribution of all or any portion of the Distributee’s Account:

(a) including any portion of the distribution that is not includable in gross income provided such amount is distributed directly to one of the following:

(i) an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) (other than an endowment contract); or

(ii) a qualified trust as described in Code Section 401(a) or an annuity contract described in Code Section 403(b) but only to the extent that

(A) the distribution is made in a direct trustee-to-trustee transfer; and

(B) the transferee plan or contract agrees to separately account for amounts transferred (and earnings thereon), including a separate accounting for the portion of the distribution which is includable in income and the portion which is not includable in income; and

(b) excluding:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s designated Beneficiary, or for a specified period of ten (10) years or more;

- (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (iii) except as otherwise provided in this Section, the portion of any distribution that is not includable in gross income (determined without regard to the exclusions for net unrealized appreciation with respect to employer securities);
- (iv) a distribution due to the hardship of an Employee, his spouse, his dependent, or his Beneficiary; or
- (v) if the Distributee is a non-spouse Beneficiary of a deceased Participant, any distribution other than a direct trustee-to-trustee transfer to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) (other than an endowment contract).

1.19 “Employee” means any person who is (a) a common law employee of a Plan Sponsor or an Affiliate, (b) a leased employee within the meaning of Code Section 414(n)(2) with respect to a Plan Sponsor, or (c) deemed to be an employee of a Plan Sponsor pursuant to regulations under Code Section 414(o).

1.20 “Entry Date” means the first day of each payroll period.

1.21 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

1.22 “Fiduciary” means each Named Fiduciary and any other person who exercises or has any discretionary authority or control regarding management or administration of the Plan, any other person who renders investment advice for a fee or has any authority or responsibility to do so with respect to any assets of the Plan, or any other person who exercises or has any authority or control respecting management or disposition of assets of the Plan.

1.23 “Fund” means the amount at any given time of cash and other property held by the Trustee pursuant to the Plan.

1.24 “Highly Compensated Employee” means, with respect to a Plan Year, each Employee who:

(a) was at any time during the Plan Year or the immediately preceding Plan Year an owner of more than five percent (5%) of the outstanding stock of a Plan Sponsor or Affiliate or more than five percent (5%) of the total combined voting power of all stock of a Plan Sponsor or Affiliate;

(b) received Annual Compensation in excess of \$105,000 (which amount may be adjusted in subsequent Plan Years based on changes in the cost of living as announced by the Secretary of the Treasury) during the immediately preceding Plan Year; or

(c) is a former Employee who met the requirements of Subsection (a)(1) or (a)(2) at the time the former Employee separated from service with the Plan Sponsor or an Affiliate or at any time after the former Employee attained age 55. The determination of who is a former Highly Compensated Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year in accordance with Treasury Regulation Section 1.414(q)-1T, Q&A-4 and Notice 97-45 or later guidance under the Code.

1.25 “Hour of Service” means:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for a Plan Sponsor or any Affiliate during the applicable computation period, and such hours shall be credited to the computation period in which the duties are performed;

(b) Each hour for which an Employee is paid, or entitled to payment, by a Plan Sponsor or any Affiliate on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence;

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by a Plan Sponsor or any Affiliate, and such hours shall be credited to the computation period or periods to which the award or agreement for back pay pertains rather than to the computation period in which the award, agreement or payment is made; provided, that the crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in Subsection (b) of this Section shall be subject to the limitations set forth in Subsection (f);

(d) Solely for purposes of determining whether a Break in Service has occurred, each hour during any period that the Employee is absent from work (1) by reason of the pregnancy of the Employee, (2) by reason of the birth of a child of the Employee, (3) by reason of the placement of a child with the Employee in connection with the adoption of the child by the Employee, or (4) for purposes of caring for such child for a period immediately following its birth or placement. The hours described in this Subsection (d) shall be credited (A) only in the computation period in which the absence from work begins, if the Employee would be prevented from incurring a Break in Service in that year solely because of that credit, or (B), in any other case, in the next following computation period;

(e) Without duplication of the Hours of Service counted pursuant to Subsection (d) hereof and solely for such purposes as required pursuant to the Family and Medical Leave Act of 1993 and the regulations thereunder (the “Act”), each hour (as determined pursuant to the Act) for which an Employee is granted leave under the Act (1) for the birth of a child, (2) for placement with the Employee of a child for adoption or foster care, (3) to care for the Employee’s spouse, child or parent with a serious health

condition, or (4) for a serious health condition that makes the Employee unable to perform the functions of the Employee's job;

(f) The Plan Administrator shall credit Hours of Service in accordance with the provisions of Section 2530.200b-2(b) and (c) of the U.S. Department of Labor Regulations or such other federal regulations as may from time to time be applicable and determine Hours of Service from the employment records of a Plan Sponsor or in any other manner consistent with regulations promulgated by the Secretary of Labor, and shall construe any ambiguities in favor of crediting Employees with Hours of Service. Notwithstanding any other provision of this Section, in no event shall an Employee be credited with more than 501 Hours of Service during any single continuous period during which he performs no duties for the Plan Sponsor or Affiliate; and

(g) In the event that a Plan Sponsor or an Affiliate acquires substantially all of the assets of another corporation or entity or a controlling interest of the stock of another corporation or merges with another corporation or entity and is the surviving entity, then service of an Employee who was employed by the prior corporation or entity and who is employed by the Plan Sponsor or an Affiliate at the time of the acquisition or merger shall be counted in the manner provided, with the consent of the Primary Sponsor, in resolutions adopted by the Plan Sponsor which authorizes the counting of such service.

(h) Notwithstanding any other provision in the Plan, Hours of Service will be provided in accordance with Code Section 414(u) with respect to qualified military service to the extent required.

1.26 “Individual Fund” means individual subfunds of the Fund as may be established by the Plan Administrator from time to time for the investment of the Fund.

1.27 “Investment Committee” means a committee, which may be established to direct the Trustee with respect to investments of the Fund.

1.28 “Investment Manager” means a Fiduciary, other than the Trustee, the Plan Administrator, or a Plan Sponsor, who may be appointed by the Primary Sponsor:

(a) who has the power to manage, acquire, or dispose of any assets of the Fund or a portion thereof; and

(b) who

(1) is registered as an investment adviser under the Investment Advisers Act of 1940;

(2) is not registered as an investment adviser under such Act by reason of Paragraph (1) of Section 203A(a) of such Act, is registered as an investment adviser under the laws of the State (referred to in such Paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary

last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary;

(3) is a bank as defined in such Act; or

(4) is an insurance company qualified to perform services described in Subsection (a) above under the laws of more than one state; and

(c) who has acknowledged in writing that he is a Fiduciary with respect to the Plan.

1.29 “Named Fiduciary” means only the following:

(a) the Plan Administrator;

(b) the Trustee;

(c) the Investment Committee;

(d) the Investment Manager; and

(e) the Appeals Fiduciary.

1.30 “Normal Retirement Age” means age 65.

1.31 “Participant” means any Employee or former Employee who has become a participant in the Plan for so long as his Account has not been fully distributed pursuant to the Plan.

1.32 “Plan Administrator” means the organization or person designated to administer the Plan by the Primary Sponsor and, in lieu of any such designation, means the Primary Sponsor.

1.33 “Plan Sponsor” means individually the Primary Sponsor and any Affiliate or other entity which has adopted the Plan and Trust; provided, however, if the Plan is adopted on behalf of Employees of one or more, but less than all, divisions or facilities of any Affiliate, then the term “Plan Sponsor”, as applied to that Affiliate, shall only apply to the divisions or facilities on behalf of whose Employees the Plan has been adopted.

1.34 “Plan Year” means the calendar year.

1.35 “Primary Sponsor” means Tyson Foods, Inc. and each successor thereto.

1.36 “Retirement Date” means the date on which the Participant experiences a termination of employment on or after (a) attaining Normal Retirement Age, or (b) becomes subject to a Disability.

1.37 “Rollover Amount” means any amount transferred to the Fund by a Participant, which amount qualifies as an Eligible Rollover Distribution under Code Sections 401(a)(31), 402(c)(4), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), and any regulations issued thereunder.

1.38 “Severance Date” means the earlier of (a) the date on which an Employee quits, is discharged, retires or dies, and (b) the first anniversary of the first date of a period in which an Employee remains absent from work (with or without pay) with the Plan Sponsor or any Affiliate for any reason. Notwithstanding the foregoing, the Severance Date of an Employee who is absent from work beyond the first anniversary of the first date of absence (1) by reason of the pregnancy of the Employee, (2) by reason of the birth of a child of the Employee, (3) by reason of the placement of a child with the Employee, or (4) for purposes of caring for the child for a period immediately following its birth or placement, means the second anniversary of the first date of absence from work. The Plan Administrator may require an Employee to provide to it timely information to establish the reason for any such absence hereunder and the number of days for which there was such an absence.

1.39 “Termination Completion Date” means the last day of the fifth consecutive Break in Service computation period, determined under the Section which defines Break in Service, in which a Participant completes a Break in Service.

1.40 “Termination of Employment” means a severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) of an Employee from all Plan Sponsors and Affiliates for any reason other than death, Disability, or attainment of a Retirement Date. Any absence from active employment of the Plan Sponsor and Affiliates by reason of an approved leave of absence shall not be deemed for any purpose under the Plan to be a Termination of Employment. Transfer of an Employee from one Plan Sponsor to another Plan Sponsor or to an Affiliate shall not be deemed for any purpose under the Plan to be a Termination of Employment. In addition, transfer of an Employee to another employer (other than a Plan Sponsor or an Affiliate) in connection with a corporate transaction involving a sale of assets, merger, or sale of stock, shall not be deemed to be a Termination of Employment, for purposes of the timing of distributions under Section 7.1 or 7.2, if the employer to which such Employee is transferred agrees with the Plan Sponsor to accept a transfer of assets from the Plan to its tax-qualified plan in a trust-to-trust transfer meeting the requirements of Code Section 414(l).

1.41 “Trust” means the trust established under an agreement between the Primary Sponsor and the Trustee to hold the Fund or any successor agreement.

1.42 “Trustee” means the trustee under the Trust.

1.43 “Valuation Date” means each regular business day.

SECTION 2

ELIGIBILITY

2.1 Existing Participants . Each individual who was a Participant on the date immediately preceding the effective date of this amendment and restatement shall continue to be a Participant as of the effective date of this amendment and restatement.

2.2 Eligible Employees . Each Eligible Employee shall become a Participant as of the Entry Date coinciding with or next following the date he completes his Eligibility Service.

2.3 Former Participants . Except as provided in Section 2.5, each former Participant who is reemployed by a Plan Sponsor shall become a Participant as of the date of his reemployment as an Eligible Employee.

2.4 Former Employees Who Completed Their Eligibility Service . Except as provided in Section 2.5, each former Employee who completes his Eligibility Service but terminates employment with a Plan Sponsor before becoming a Participant shall become a Participant as of the latest of the date he (a) is reemployed, (b) would have become a Participant if he had not incurred a termination of employment, or (c) becomes an Eligible Employee.

2.5 Former Employees Who Incur a Break in Service . If a former Employee incurs a Break in Service, he shall become a Participant as of the Entry Date coinciding with or next following the date he completes a period of Eligibility Service following the date of his reemployment, regardless of whether the former Employee previously was a Participant.

2.6 Eligible Employees Who Have Not Completed Their Eligibility Service . Solely for the purpose of contributing Deferral Amounts to the Plan, an Eligible Employee who has not yet completed his Eligibility Service may become a Participant as of the first day of the month following the completion of three full calendar months of service. Notwithstanding the foregoing, any Participant who is a Highly Compensated Employee who has not attained at least age 21 and has not completed his Eligibility Service shall not be permitted to contribute Deferral Amounts to the Plan following the Plan Year in which such a Participant is first eligible to contribute such Deferral Amounts until the Participant has attained at least age 21 and completed his Eligibility Service.

2.7 Eligibility to Contribute Rollover Amounts . Solely for the purpose of contributing a Rollover Amount to the Plan, an Eligible Employee who has not yet become a Participant pursuant to any other provision of this Section 2 shall become a Participant as of the date on which the Rollover Amount is contributed to the Plan only with respect to that Rollover Amount.

2.8 Stock Match Contribution Eligibility . One or more classes of Eligible Employees of a Plan Sponsor may be designated as Participants solely for purposes of receiving contributions made pursuant to Section 3.3.

SECTION 3
CONTRIBUTIONS

3.1 (a) Deferral Amounts. The Plan Sponsor shall make a contribution to the Fund on behalf of each Participant who is an Eligible Employee and has elected to defer a portion of his Annual Compensation otherwise payable to him for the Plan Year and to have such portion contributed to the Fund. Except to the extent permitted under Section 3.1(c) and Code Section 414(v), the contribution made by a Plan Sponsor on behalf of a Participant under this Section 3.1(a) shall be in an amount equal to the amount specified in the Participant's deferral election, but not greater than sixty percent (60%), but not less than two percent (2%) of the Participant's Annual Compensation. Pursuant to Section 4 of Appendix C, the Plan Administrator may restrict the amount which Highly Compensated Employees may defer under this Section 3.1(a).

(b) Limit on Deferral Amounts. Except to the extent permitted under Section 3.1(c) and Code Section 414(v), Elective Deferrals shall in no event exceed the limit set forth in Code Section 402(g) in any one taxable year of the Participant. In the event the amount of Elective Deferrals exceeds Code Section 402(g) limit, in any one taxable year then,

(1) not later than the immediately following March 1, the Participant may designate to the Plan the portion of the Participant's Deferral Amounts which consist of excess Elective Deferrals,

(2) not later than the immediately following April 15, the Plan may distribute the amount designated to it under Paragraph (1) above, as adjusted to reflect income, gain, or loss attributable to it through the date of distribution, and reduced by any "Excess Deferral Amounts," as defined in Appendix C hereto, previously distributed or recharacterized with respect to the Participant for the Plan Year beginning with or within that taxable year; and

(3) that portion of the contributions allocated to the Participant pursuant to Section 3.2 on account of the Deferral Amounts attributable to excess Elective Deferrals shall be forfeited.

The payment of the excess Elective Deferrals, as adjusted and reduced, from the Plan shall be made to the Participant without regard to any other provision in the Plan. In the event that a Participant's Elective Deferrals exceed the Code Section 402(g) limit, as adjusted, in any one taxable year under the Plan and other plans of the Plan Sponsor and its Affiliates, the Participant shall be deemed to have designated for distribution under the Plan the amount of excess Elective Deferrals, as adjusted and reduced, by taking into account only Elective Deferral amounts under the Plan and other plans of the Plan Sponsor and its Affiliates.

(c) Catch-Up Contributions.

(1) A Participant who is eligible to contribute Deferral Amounts to the Plan and who has attained or will attain age 50 on or before the last day of the Plan Year shall be eligible to elect to defer a portion of his Annual Compensation otherwise payable to him for the Plan Year and have such portion contributed to the Fund on his behalf as catch-up contributions ("Catch-Up Contributions") in excess of the limits on Deferral Amounts set forth in Section 3.1(a) or 3.1(b) or any limit otherwise established by the Plan Administrator with respect to Highly Compensated Employees under Section 3.1(a). In addition, amounts contributed pursuant to Section 3.1(a) or this Section 3.1(c) may be treated as Catch-Up Contributions to the extent such amounts exceed any limit on Deferral Amounts that may be determined pursuant to Section 3 of Appendix C hereto (this limit and the limits in the preceding sentence being collectively referred to as the "Applicable Deferral Limits").

(2) Any election under this Section 3.1(c) must be made before the portion of Annual Compensation that the Participant desires to defer is payable and may only be made or be deemed to have been made in such manner and subject to such rules and limitations as the Plan Administrator may prescribe and shall specify the amount of Annual Compensation that the Participant desires to defer and to have contributed to the Fund. Catch-Up Contributions made pursuant to this Section 3.1(c) by a Participant shall be in an amount equal to the amount specified in the Participant's deferral agreement and may be made on a payroll period basis or an annual basis in accordance with the administrative procedures provided by the Plan Administrator, but shall in no event shall the contributions exceed the limit on Catch-Up Contributions under Code Section 414(v) in any calendar year (\$5,000 for 2008), as adjusted in future years by the Secretary of the Treasury (the "Code Section 414 (v) limit").

(3) Contributions made pursuant to this Section 3.1(c) shall not be taken into account for purposes of implementing the limitations set forth in Section 3.1(a), 3.1(b) and Appendix A hereto. The Plan shall not be treated as failing to satisfy the provisions of Appendix B, Appendix C or Code Section 410(b), as applicable, by reason of the making of the Catch-Up Contributions as described in this Section 3.1(c).

(4) The portion of the contribution made by a Plan Sponsor under this Section 3.1(c) that will be treated as Catch-Up Contributions will be determined as of the last day of the Plan Year. Amounts contributed by a Plan Sponsor pursuant to this Section 3.1(c) or recharacterized pursuant to Section 3 of Appendix C that do not exceed the Applicable Deferral Limits will not be treated as Catch-Up Contributions but will be treated as Deferral Amounts. Amounts contributed by a Plan Sponsor pursuant to this Section 3.1(c) or recharacterized pursuant to Section 3 of Appendix C that exceed the Applicable Deferral Limits will be treated as Contributions; provided, however, that the contribution under

this Section 3.1(c) or any amounts recharacterized under Section 3 of Appendix C for any Participant shall not be treated as a Catch-Up Contributions to the extent that those amounts and all other Elective Deferrals of the Participant under the Plan and other plans of the Plan Sponsor and its Affiliates for the taxable year exceed the Participant's Annual Compensation.

(5) The excess of the amounts treated as Catch-Up Contributions for a Participant under the Plan and other plans of the Plan Sponsor and its Affiliates over the Code Section 414(v) limit and amounts that are not treated as Catch-Up Contributions solely because they exceed the Participant's Annual Compensation, will be distributed to the Participant in the same manner as Deferral Amounts are distributed pursuant to Section 3.1(b).

(d) Deferral Elections. The elections under this Section 3.1 must be made before the Annual Compensation is payable and may only be made in such manner and subject to such rules and limitations as the Plan Administrator may prescribe and shall specify the percentage or, if permitted, dollar amount of Annual Compensation that the Participant desires to defer pursuant to Section 3.1(a) and/or 3.1(c) and to have contributed to the Fund. Once a Participant has made an election for a Plan Year, the Participant may revoke or modify his election to increase or reduce the rate of future deferrals, as provided in the administrative procedures established by the Plan Administrator.

3.2 Matching Contributions. The Plan Sponsor shall make contributions to the Fund with respect to each pay period during the Plan Year on behalf of each Participant who is an Eligible Employee and who has completed his Eligibility Service in an amount equal to (a) one hundred percent (100%) of the Participant's Annual Compensation deferred by the Participant pursuant to Section 3.1 for the pay period, to the extent the contribution under Section 3.1 does not exceed three percent (3%) of his Annual Compensation for the pay period, and (b) fifty percent (50%) of the Participant's Annual Compensation deferred by the Participant pursuant to Section 3.1 for the pay period, to the extent the contribution under Section 3.1 exceeds three percent (3%) of his Annual Compensation for the pay period but does not exceed five percent (5%) of such Annual Compensation. Contributions made pursuant to this Section 3.2 shall be determined without regard to the timing of when a Participant exceeds the limitation under Code 402(g), subject to the non-discrimination provisions of Code Section 401(a)(4).

3.3 Stock Match Contributions.

(a) The Plan Sponsor proposes to make contributions to the Fund with respect to each Plan Year on behalf of those eligible Participants who have completed at least one year of Service (as defined below) in the amount and manner as determined in this Section 3.3.

(b) Contributions made pursuant to this Section 3.3 on behalf of each eligible Participant shall be equal to a percentage, not to exceed fifty percent (50%), of the first ten percent (10%) of Base Earnings (as defined below) allocated by such eligible

Participant to the purchase of the Primary Sponsor's common stock under the Tyson Foods, Inc. Employee Stock Purchase Plan (the "ESPP") during such Participant's period of participation in the ESPP following completion of his or her one-year period of Service. The Board of Directors (or any committee of the Board of Directors) shall determine from time to time on a prospective basis the level of contributions to be made pursuant to this Section 3.3, consistent with the general parameters set forth in the immediately preceding sentence. The Plan Administrator shall advise eligible Participants of any change in the level of matching contributions as soon as administratively practicable.

(c) Contributions generally will be made at or about the same time as the payroll deductions for the Participant contributions under the ESPP to which they relate.

(d) For purposes of this Section 3.3, an eligible Participant shall be an Employee of the Primary Sponsor (or any Plan Sponsor also maintaining the ESPP) who is determined not to be a Highly Compensated Employee for the applicable Plan Year.

(e) The Primary Sponsor retains the discretion to suspend for any specific or indefinite periods of time the making of contributions pursuant to this Section 3.3 to otherwise eligible Participants as may from time to time be determined to be in the best interests of the Primary Sponsor. Such determinations shall be made by the Board of Directors (or any committee of the Board of Directors). Any such suspension of contributions may be applied to all eligible Participants or to one or more identifiable classes of eligible Participants and may be implemented at any time. Otherwise eligible Participants affected by any such suspension shall be provided with prior written notice of the implementation, and lifting, of the suspension.

(f) For purposes of this Section 3.3, the following terms shall have the meanings ascribed to them below:

(1) "Base Earnings" means the amount of regular salary or wages, including overtime payments and commission payments, but does not include discretionary and non-discretionary bonuses or other irregular payments made by a Plan Sponsor to a Participant.

(2) "Service" means that period of continuous uninterrupted employment with the Primary Sponsor or any related entity designated by the Primary Sponsor under the ESPP (a "Related Entity") from an eligible Participant's most recent date of hire until his date of termination of employment with the Primary Sponsor and all such Related Entities. However, in the case of a Related Entity which has been acquired by the Primary Sponsor through the acquisition of substantially all of the assets or all of the stock of the Related Entity, Service shall include employment prior to the date of such acquisition only on such terms as the Board of Directors may expressly provide.

3.4 Rollover Contributions. Any Eligible Employee may, with the consent of the Plan Administrator and subject to such rules and conditions as the Plan Administrator may prescribe, transfer a Rollover Amount to the Fund (which may include without limitation prohibitions against transferring certain categories of Rollover Amounts to the Plan); provided, however, that the Plan Administrator shall not administer this provision in a manner which is discriminatory in favor of Highly Compensated Employees.

3.5 Forfeitures. Forfeitures contemplated by Section 13.5 or received in a plan-to-plan transfer of funds contemplated by Section 16.5 may be used at the discretion of the Plan Administrator to reduce Plan expenses, to reduce Plan Sponsor contribution obligations or to apply towards the restoration of the forfeited portion of a reemployed Participant's Account and shall not be used to increase benefits.

3.6 Deduction Limit. Contributions may be made only in cash or other property which is acceptable to the Trustee. In no event will the sum of contributions under Sections 3.1, 3.2, 3.3 and Appendix C exceed the deductible limits under Code Section 404.

3.7 Contributions Related to Military Service. Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code to the extent required.

SECTION 4 **ALLOCATIONS AND INVESTMENT OF TRUST ASSETS**

4.1 Allocation of Contributions.

(a) As soon as reasonably practicable following the date of withholding by the Plan Sponsor, if applicable, and receipt by the Trustee, Plan Sponsor contributions made on behalf of each Participant under Sections 3.1 and 3.2, and Rollover Amounts contributed by the Participant, shall be allocated to the Salary Deferral Contribution Account, Employer Contribution Account and Rollover Account, respectively, of the Participant on behalf of whom the contributions were made.

(b) As soon as reasonably practicable following the date of the payroll deductions described in Section 3.3(c), Plan Sponsor contributions made under Section 3.3 shall be allocated to the Stock Match Account of each eligible Participant.

4.2 Allocation of Income or Loss. As of each Valuation Date, the Trustee shall allocate the net income or net loss of each Individual Fund to each Account in the proportion that the value of the Account as of the Valuation Date bears to the value of all Accounts invested in that Individual Fund as of the Valuation Date.

4.3 Loan Fund. A Loan Fund shall be established by the Trustee on behalf of each Participant for whom a loan is made pursuant to Article 5. The Loan Fund shall be credited with the amount of any loan made by the Plan to the Participant and shall be debited with all principal and interest repayments of any such loans. Under rules established by the Plan Administrator, a Participant's Account shall be debited by the amount credited to the Participant's Loan Fund.

All principal and interest repayments debited to the Loan Fund shall be invested as contributions to the Participant's Account pursuant to this Section 4. Each Loan Fund shall be invested in a note or notes made by the Participant evidencing the promised repayment of monies loaned to the Participant from the Fund.

4.4 Participant Direction of Contributions. Subject to a determination by the Plan Administrator that investment options and direction will be given to Participants and Beneficiaries, each Participant and each Beneficiary of a deceased Participant may direct the Plan Administrator to invest contributions to the Participant's Account in one or more Individual Funds as the Participant shall designate by providing notice to the Plan Administrator according to the procedures and rules established by the Plan Administrator for that purpose.

(a) All investment directions, or changes in investment directions, of contributions shall be made in accordance with the procedures established by the Plan Administrator, subject to administrative practicalities. New investment directions shall be effective as of the date that such directions are processed by the Plan Administrator in accordance with the procedures established for such purpose and subject to administrative practicalities.

(b) An investment direction, once given, shall be deemed to be a continuing direction until changed as otherwise provided herein. If no direction is effective for the date a contribution is to be made, all contributions which are to be made for such date shall be invested in such Individual Fund as the Plan Administrator, the Investment Manager, the Investment Committee, or the Trustee, as applicable, may determine, which may include the "qualified default investment alternative" (as described in Section 4.6). To the extent permissible by law, no Fiduciary shall be liable for any loss, which results from a Participant's exercise or failure to exercise the Participant's investment election.

4.5 Participant Directions to Transfer Between Individual Funds. A Participant may elect according to the procedures and rules established by the Plan Administrator, to transfer the investment of the Participant's Account among Individual Funds. An election under this Section shall be effective as of the date that such directions are processed by the Plan Administrator in accordance with the procedures established for such purpose, subject to administrative practicalities.

4.6 Qualified Default Investment Alternative. The Plan Administrator may establish a qualified default investment alternative. A "qualified default investment alternative" shall mean a qualified default investment alternative as defined in regulations issued by the Department of Labor pursuant to ERISA Section 404(c)(5), or any successor thereto, that is designated by the Plan Administrator. If all or a portion of the Account of a Participant or Beneficiary who fails to make an affirmative investment election as to such portion of the Participant's Account is to be invested in the qualified default investment alternative, the Plan Administrator shall provide to such Participant or Beneficiary a notice explaining the Participant's or Beneficiary's right to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election, such contributions will be invested and give the Participant or Beneficiary a reasonable period of time after receipt of such

notice to make such designation, all in accordance with regulations issued by the U.S. Department of Labor pursuant to ERISA Section 404(c)(5) and shall provide such other information to the Participant or Beneficiary as may be required by such regulations.

SECTION 5

PLAN LOANS

5.1 Eligible Individuals. Subject to the provisions of the Plan and the Trust, each Participant who is an Employee shall have the right, subject to prior approval by the Plan Administrator, to borrow from the Fund. In addition, each “party in interest,” as defined in ERISA Section 3(14), who is (a) a Participant but no longer an Employee, (b) the Beneficiary of a deceased Participant, or (c) an alternate payee of a Participant pursuant to the provisions of a “qualified domestic relations order,” as defined in Code Section 414(p), shall also have the right, subject to prior approval by the Plan Administrator, to borrow from the Fund; provided, however, that loans to such parties in interest may not discriminate in favor of Highly Compensated Employees.

5.2 Application. In order to apply for a loan, a borrower must complete and submit to the Plan Administrator documents or information required by the Plan Administrator for this purpose and must pay all application fees and associated loan processing fees, if any.

5.3 Equivalent Basis. Loans shall be available to all eligible borrowers on a reasonably equivalent basis which may take into account the borrower’s creditworthiness, ability to repay and ability to provide adequate security. Loans shall not be made available to Highly Compensated Employees, officers or shareholders of a Plan Sponsor in an amount greater than the amount made available to other borrowers. This provision shall be deemed to be satisfied if all borrowers have the right to borrow the same percentage of their interest in their vested Accounts, notwithstanding that the dollar amount of such loans may differ as a result of differing values of Participants’ vested Accounts. The Plan Administrator may limit Participants’ rights to borrow from one or more categories of subaccounts which, taken together, comprise the Accounts of Participants.

5.4 Interest Rate. Each loan shall bear a “reasonable rate of interest” and provide that the loan be amortized in substantially level payments, made no less frequently than quarterly, over a specified period of time. A “reasonable rate of interest” shall be that rate that provides the Plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances; provided, however, that in setting such interest rate, the Plan Administrator may take into account the provisions of the Servicemembers Civil Relief Act of 2003 which requires that the rate of interest for such a loan subject to the provisions of such Act shall not exceed six percent (6%) per annum.

5.5 Security. Each loan shall be adequately secured, with the security for the outstanding balance of all loans to the borrower to consist of one-half (½) of the borrower’s interest in the Participant’s vested Account, or such other security as the Plan Administrator deems acceptable. No portion of the Participant’s Salary Deferral Contribution Account shall be

used as security for any loan hereunder unless and until such time as the loan amount exceeds the value of the borrower's interest in the Participant's vested amounts in all other Accounts.

5.6 Loan Limit. Each loan, when added to the outstanding balance of all other loans to the borrower from all retirement plans of the Plan Sponsor and its Affiliates which are qualified under Section 401 of the Code, shall not exceed the lesser of:

(a) \$50,000, reduced by the excess, if any, of

(1) the highest outstanding balance of loans made to the borrower from all retirement plans qualified under Code Section 401 of the Plan Sponsor and its Affiliates during the one (1) year period immediately preceding the day prior to the date on which such loan was made, over

(2) the outstanding balance of loans made to the borrower from all retirement plans qualified under Code Section 401 of the Plan Sponsor and its Affiliates on the date on which such loan was made, or

(b) one-half (½) of the value of the borrower's interest in the vested Account attributable to the Participant's Account.

For purposes of this Section, the value of the vested Account attributable to a Participant's Account shall be established as of the latest preceding Valuation Date, or any later date on which an available valuation was made, and shall be adjusted for any distributions or contributions made through the date of the origination of the loan.

5.7 Loan Term. Each loan, by its terms, shall be repaid within five (5) years. The Plan Sponsor may require Employees to repay loans through payroll deductions and prepayments will be allowed to the extent allowed under the note.

5.8 Loan Minimum. Each loan shall be made in an amount of no less than \$1,000.

5.9 Maximum Number of Loans. A borrower is permitted to have only two loans existing under this Plan at any one time.

5.10 Default. The entire unpaid principal sum and accrued interest shall, at the option of the Plan Administrator, become due and payable if (a) a borrower fails to make any loan payment when due (including the expiration of any applicable grace period), (b) a borrower ceases to be a "party in interest", as defined in ERISA Section 3(14), (c) the vested Account held as security under the Plan for the borrower will, as a result of an impending distribution or withdrawal, be reduced to an amount less than the amount of all unpaid principal and accrued interest then outstanding under the loan, or (d) a borrower makes any untrue representations or warranties in connection with the obtaining of the loan. In that event, the Plan Administrator may take such steps as it deems necessary to preserve the assets of the Plan, including, but not limited to, the following: (1) direct the Trustee to deduct the unpaid principal sum, accrued interest, and any other applicable charge under the note evidencing the loan from any benefits

that may become payable out of the Plan to the borrower, (2) direct the Plan Sponsor to deduct and transfer to the Trustee the unpaid principal balance, accrued interest, and any other applicable charge under the note evidencing the loan from any amounts owed by the Plan Sponsor to the borrower, or (3) liquidate the security given by the borrower, other than amounts attributable to a Participant's Salary Deferral Contribution Account, and deduct from the proceeds the unpaid principal balance, accrued interest, and any other applicable charge under the note evidencing the loan. To the extent that such distribution of an offset amount in the case of Subsection (a) would violate the requirements of Section 401(a) or 401(k) (because for example, the deduction would have to be made from the Participant's Salary Deferral Contribution Account while the Participant is an Employee), the entire outstanding balance of the loan (including accrued interest) shall be a deemed distribution as provided in Treasury Regulations under Code Section 72(p), and thereafter a distribution of an offset amount may be made at the earliest date legally permissible or deferred, at the Plan Administrator's discretion applied on a basis not discriminatory in favor of Highly Compensated Employees, until the borrower receives another distribution from the Plan. If any part of the indebtedness under the note evidencing the loan is collected by law or through an attorney, the borrower shall be liable for attorneys' fees in an amount equal to ten percent of the amount then due and all costs of collection. Notwithstanding the foregoing, a loan may be satisfied upon a Participant's termination of employment by distributing the note evidencing the debt as part of an Eligible Rollover Distribution; provided, however, that the trustee, custodian or administrator for the Eligible Retirement Plan indicates its willingness to accept such property.

5.11 Plan Loan Policy and Regulations . Each loan shall be made only in accordance with a separate loan policy which may be established by the Plan Administrator and regulations and rulings of the Internal Revenue Service and the Department of Labor. The Plan Administrator shall be authorized to administer the loan program of this Section and shall act in his sole discretion to ascertain whether the requirements of such regulations and rulings and this Section have been met. Any loan shall be funded from a Participant's Account pursuant to uniform procedures prescribed by the Plan Administrator.

SECTION 6 **IN-SERVICE WITHDRAWALS**

6.1 Hardship Distributions .

(a) The Trustee shall, upon the direction of the Plan Administrator, withdraw all or a portion of a Participant's Salary Deferral Contribution Account consisting of Deferral Amounts (but not earnings thereon), including Catch-Up Contributions made pursuant to Section 3.1(c), prior to the time such account is otherwise distributable in accordance with the other provisions of the Plan; provided, however, that any such withdrawal shall be made only if the Participant is an Employee and demonstrates that he is suffering from "hardship" as determined herein. For purposes of this Section, a withdrawal will be deemed to be an account of hardship if the withdrawal is on account of:

(1) expenses for (or necessary to obtain) medical care that would be deductible by the Participant under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);

(2) purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, or for his spouse, children or dependents (as defined in Code Section 152 and, for taxable years beginning or after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B));

(4) payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage on the Participant's principal residence;

(5) payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code Section 152 and, for taxable years beginning or after January 1, 2005, without regard to Code Section 152(d)(1)(B));

(6) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or

(7) if permitted by the Plan Administrator, any other contingency determined by the Internal Revenue Service to constitute an "immediate and heavy financial need" within the meaning of Treasury Regulations Section 1.401(k)-1(d).

(b) In addition to the requirements set forth in Subsection 6.1(a) above, any withdrawal pursuant to Section 6.1 shall not be in excess of the amount necessary to satisfy the need determined under Section 6.1 and shall also be subject to the requirements of this Subsection (b).

(1) The Participant shall first obtain all withdrawals, other than hardship withdrawals, and all nontaxable loans currently available under all plans maintained by the Plan Sponsor; and

(2) the Plan Sponsor shall not permit Elective Deferrals, including catch-up contributions as described in Code Section 414(v), or after-tax employee contributions to be made to the Plan or any other plan maintained by the Plan Sponsor, for a period of six (6) months after the Participant receives the withdrawal pursuant to this Section.

Any determination of the existence of hardship and the amount to be withdrawn on account thereof shall be made by the Plan Administrator (or such other person as may be required to make such decisions) in accordance with the foregoing rules as applied in a uniform and nondiscriminatory manner; provided that, unless the Participant requests otherwise, any such withdrawal shall include the amount necessary to pay any federal, state and local income taxes and penalties reasonably anticipated to result from the withdrawal.

(c) Effective January 1, 2009, to the extent provided in regulations issued by the Secretary of the Treasury, if an event would constitute "hardship" under Subsections (a) and (b) if such event occurred with respect to a Participant's spouse or dependent (as defined in Code Section 152), such event shall constitute "hardship" if it occurs with respect to a person who is a designated, primary Beneficiary with respect to the Participant.

6.2 Age 59½. A Participant who has attained at least age 59½ may elect to receive a distribution of all or any portion of his Account.

6.3 After-Tax and Rollover Amounts. A Participant may elect to receive a distribution of all or any portion of his After-Tax Contribution Account or Rollover Account.

6.4 Disability. A Participant who becomes subject to a Disability may elect to receive a distribution of all or any portion of his Account.

6.5 General In-Service Distribution Rules. Any withdrawal under this Section 6 shall be made in a lump sum and all such withdrawals shall be made only in accordance with such other rules, policies, procedures, restrictions and conditions as the Plan Administrator may from time to time adopt.

SECTION 7

PAYMENT OF BENEFITS ON TERMINATION OF EMPLOYMENT

7.1 General Rules.

(a) In the event of Termination of Employment, a Participant whose vested Account exceeds \$1,000 may request that payment of his vested Account be made. Payment of a Participant's Account shall be in the form elected by such Participant under Section 7.1(b). All payments will be made (or commence) as soon as administratively feasible following a Participant's request. No distribution of the Participant's Account will be made without his request prior to the first to occur of the following: (1) April 1 of the calendar year following the calendar year in which the Participant attains age 70½, or (2) becoming subject to a Disability.

(b) Payment of a Participant's Account may be made in the form of:

(1) a lump sum payment in cash of the entire Account; provided that with respect to amounts allocated to the Stock Match Account only, a Participant may elect to receive a lump sum payment in cash or in-kind if the Participant's vested Account exceeds \$5,000;

(2) if the value of the vested Account exceeds \$5,000, a Participant or Beneficiary may also select annual or monthly payments, with or without a stated dollar amount (subject to a minimum dollar amount as may be specified by the Plan Administrator from time to time), but no time period may exceed the life expectancy of the Participant or the joint lives of the Participant and his Beneficiary;

(3) to the extent otherwise permitted, any combination of the foregoing; or

(4) solely with respect to a Participant a portion of whose account consists of an amount attributable to a plan listed in Appendix D, such additional forms of distribution with respect to certain portions of the Participant's account in the manner, and to the extent, provided in Appendix D.

(c) If a Participant who has a Termination of Employment has not previously received a distribution of his Account under Subsection (a) or (b), payment of his Account will be made (or commence) in any event as of April 1 of the calendar year following the calendar year in which the Participant attains age 70½.

7.2 Small Accounts. In the event of Termination of Employment, a Participant whose vested Account is \$1,000 or less shall be paid in a lump sum payment in cash as soon as administratively feasible after the Participant's Termination of Employment.

7.3 Vesting. A Participant shall be fully vested in all portions of his Account at all times.

7.4 Change in Vesting Schedule. If a Plan amendment (including this amendment and restatement) directly or indirectly changes the vesting schedule, the vesting percentage for each Participant in the Participant's Account accumulated to the date when the amendment is adopted shall not be reduced as a result of the amendment. In addition, any Participant with at least three (3) years of vesting service may irrevocably elect to remain under the pre-amendment vesting schedule with respect to all of the Participant's benefits accrued both before and after the amendment, unless after the amendment, any such Participant's nonforfeitable percentage at any time cannot be less than such Participant's nonforfeitable percentage determined without regard to such amendment. A Participant's election under this Section 7.4 must be made during the period beginning with the date the amendment is adopted or deemed to be made and ending on the latest of:

(a) sixty (60) days after the amendment is adopted;

(b) sixty (60) days after the amendment becomes effective; or

(c) sixty (60) days after the Participant is issued written notice of the amendment by the Primary Sponsor.

7.5 Cash-out/Buyback.

(a) If and to the extent the Plan accepts the transfer, by merger or otherwise, of funds attributable to a Participant who, prior to such transaction, experienced a Termination of Employment prior to becoming fully vested in the pre-transaction portion of his Account, the nonvested portion of the Account shall be treated in accordance with this Section. The nonvested portion of the Account of a Participant shall be forfeited as of the earlier of the date the Participant receives a distribution of the vested portion of his Account or the Participant's Termination Completion Date. For such purposes, a Participant who has had a Termination of Employment and who is not vested in any portion of his Account, the Participant shall be deemed to have received a distribution of his Account.

(b) If a Participant who has received (or has been deemed to have received) a distribution of the vested portion of his Account is reemployed by a Plan Sponsor or an Affiliate prior to his Termination Completion Date and (1) if the Participant's Account was partially vested, and the Participant repays to the Fund no later than the fifth anniversary of the Participant's reemployment by the Plan Sponsor or an Affiliate all of that portion of his vested Account which was paid to him or (2) if the Participant's Account was not vested upon his Termination of Employment, then any portion of his Account which was forfeited shall be restored effective on the Valuation Date coinciding with or next following the repayment or the Participant's reemployment, respectively. The restoration on any Valuation Date of the forfeited portion of the Account of a Participant pursuant to the preceding sentence shall be made first from forfeitures available for allocation on that Valuation Date, to the extent available, and secondly from contributions by the Plan Sponsor.

SECTION 8
PAYMENT OF BENEFITS ON RETIREMENT

8.1 Commencement of Benefits on Retirement. A retired Participant whose Account exceeds \$1,000 shall be paid (or payment shall commence), with the consent of the Participant, as soon as administratively feasible following the Participant's Retirement Date. If a Participant who has retired has not previously received a distribution of his Account under this Section, payment of his Account will be made (or commence) in any event as of April 1 of the calendar year following the calendar year in which the Participant attains age 70½.

8.2 Form of Distribution on Retirement. Payment of a Participant's Account pursuant to this Section 8 may be made in one of the forms as described in Section 7.1(b) elected by such Participant.

8.3 Small Accounts Payable on Retirement. Notwithstanding Section 8.2, a retired Participant whose Account is \$1,000 or less shall be paid in a lump sum payment as soon as administratively feasible following the date the Participant attains a Retirement Date.

SECTION 9 DEATH BENEFITS

If a Participant dies before receiving a distribution of his vested Account, his Beneficiary shall receive the Participant's vested Account either (a) if the Participant's vested Account is \$1,000 or less, in a lump sum payment in cash as soon as administratively feasible after the Participant's death or (b) otherwise, in any one of the forms described in Section 7.1(b) as elected by the Beneficiary as soon as administratively feasible following the death of the Participant or, if the Beneficiary so elects, at any later date permitted under Appendix E. If a Participant dies after beginning to receive a distribution of his vested Account, his Beneficiary shall receive the undistributed portion of his vested Account, if any, in any form described in Section 7.1(b) selected by the Beneficiary.

Effective January 1, 2007, in case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed and then terminated employment on account of death.

SECTION 10 GENERAL RULES ON DISTRIBUTIONS

10.1 Adjustments for Income. Except for installment distributions, Accounts shall not be adjusted for earnings or losses incurred after the Valuation Date with respect to which the Account is valued for imminent payout purposes. Prior to distribution of an Account, the Account shall be reduced by the amount necessary to satisfy the unpaid principal, accrued interest and penalties on any loan made to the Participant.

10.2 Form of Election Irrevocable. A Participant or Beneficiary's election as to the form of payment of the Participant's Account under Section 7.1(b) shall be irrevocable once such election is processed by the Plan Administrator; provided, however, effective January 1, 2009, that any Participant or Beneficiary receiving payments in the form permitted under Section 7.1(b)(2) may make a one-time election to receive the remaining installments in a lump sum.

10.3 Direct Rollovers. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 10 (other than Section 10.2), a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of a distribution pursuant to this Section which is an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover so long as all Eligible Rollover Distributions to a Distributee for a calendar year total or are expected to total at least \$200 and, in the case of a Distributee who elects to directly receive a

portion of an Eligible Rollover Distribution and directly roll the balance over to an Eligible Retirement Plan, the portion that is to be directly rolled over totals at least \$500. If the Eligible Rollover Distribution is one to which Code Sections 401(a)(11) and 417 do not apply, such Eligible Rollover Distribution may commence less than thirty (30) days after the notice required under Treasury Regulations section 1.411(a)-11(c) is given, provided that:

- (a) the Plan Administrator clearly informs the Distributee that the Distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and
- (b) the Distributee, after receiving the notice, affirmatively elects a distribution.

10.4 Suspension for Rehires. If a Participant has a termination of employment and is subsequently reemployed by a Plan Sponsor or an Affiliate prior to receiving a complete distribution of his Account, the Participant shall not be entitled to a distribution or, if applicable, to any remaining distributions, of his Account under this Section while he is an Employee.

10.5 Required Minimum Distributions. Notwithstanding any other provisions of the Plan, distributions will be made in accordance with Code Section 401(a)(9) and the regulations issued thereunder, including the incidental benefit requirements and such distributions shall be administered in accordance with the requirements of Appendix E hereto.

10.6 Withholding. Notwithstanding any other provision of the Plan to the contrary, the Plan Administrator and Trustee shall have the right to withhold any and all Federal, state and local taxes which may be withheld in accordance with applicable law.

SECTION 11

ADMINISTRATION OF THE PLAN

11.1 Trust Agreement. The Primary Sponsor shall establish a Trust with the Trustee designated by the Board of Directors for the management of the Fund, which Trust shall form a part of the Plan and is incorporated herein by reference.

11.2 Operation of the Plan Administrator. The Primary Sponsor shall appoint a Plan Administrator. If an organization is appointed to serve as the Plan Administrator, then the Plan Administrator may designate in writing one or more persons who may act on behalf of the Plan Administrator. If more than one person is so designated with respect to the same administrative function, a majority of such persons shall constitute a quorum for the transaction of business and shall have the full power to act on behalf of the Plan Administrator. The Primary Sponsor shall have the right to remove the Plan Administrator at any time by notice in writing. The Plan Administrator may resign at any time by written notice of resignation to the Trustee and the Primary Sponsor. Upon removal or resignation of the Plan Administrator, or in the event of the dissolution of the Plan Administrator, the Primary Sponsor shall appoint a successor. An organization serving as Plan Administrator shall have the right to remove any person designated to act on behalf of the Plan Administrator at any time by notice in writing. Any such designee

may resign at any time by written notice of resignation to the Plan Administrator. Upon removal or resignation of any such designee, the Plan Administrator may appoint a successor.

11.3 Fiduciary Responsibility.

(a) The Plan Administrator, as a Named Fiduciary, may allocate its fiduciary responsibilities among Fiduciaries other than the Trustee, designated in writing by the Plan Administrator and may designate in writing persons other than the Trustee to carry out its fiduciary responsibilities under the Plan. The Plan Administrator may remove any person designated to carry out its fiduciary responsibilities under the Plan by notice in writing to such person.

(b) The Plan Administrator and each other Fiduciary may employ persons to perform services and to render advice with regard to any of the Fiduciary's responsibilities under the Plan. Charges for all such services performed and advice rendered may be paid by the Fund to the extent permitted by ERISA.

(c) Each Plan Sponsor shall indemnify and hold harmless each person constituting the Plan Administrator or the Investment Committee, except those individuals who are not a Plan Sponsor or an employee of a Plan Sponsor, if any, from and against any and all claims, losses, costs, expenses (including, without limitation, attorney's fees and court costs), damages, actions or causes of action arising from, on account of or in connection with the performance by such person of his duties in such capacity, other than such of the foregoing arising from, on account of or in connection with the willful neglect or willful misconduct of such person.

11.4 Duties of the Plan Administrator.

(a) The Plan Administrator shall advise the Trustee with respect to all payments under the terms of the Plan and shall direct the Trustee in writing to make such payments from the Fund; provided, however, in no event shall the Trustee be required to make such payments if the Trustee has actual knowledge that such payments are contrary to the terms of the Plan and the Trust.

(b) The Plan Administrator shall from time to time establish rules, not contrary to the provisions of the Plan and the Trust, for the administration of the Plan and the transaction of its business. All elections and designations under the Plan by a Participant or Beneficiary shall be made on forms prescribed by the Plan Administrator. The Plan Administrator shall have discretionary authority to construe the terms of the Plan and shall determine all questions arising in the administration, interpretation and application of the Plan, including, but not limited to, those concerning eligibility for benefits and it shall not act so as to discriminate in favor of any person. All determinations of the Plan Administrator shall be conclusive and binding on all Employees, Participants, Beneficiaries and Fiduciaries, subject to the provisions of the Plan and the Trust and subject to applicable law.

(c) The Plan Administrator shall furnish Participants and Beneficiaries with all disclosures now or hereafter required by ERISA or the Code. The Plan Administrator shall file, as required, the various reports and disclosures concerning the Plan and its operations as required by ERISA and by the Code, and shall be solely responsible for establishing and maintaining all records of the Plan and the Trust.

(d) The statement of specific duties for a Plan Administrator in this Section is not in derogation of any other duties which a Plan Administrator has under the provisions of the Plan or the Trust or under applicable law.

11.5 Investment Manager. The Primary Sponsor may, by action in writing certified by notice to the Trustee, appoint an Investment Manager. Any Investment Manager may be removed in the same manner in which appointed, and in the event of any removal, the Investment Manager shall, as soon as possible, but in no event more than thirty (30) days after notice of removal, turn over all assets managed by it to the Trustee or to any successor Investment Manager appointed, and shall make a full accounting to the Primary Sponsor with respect to all assets managed by it since its appointment as an Investment Manager.

11.6 Investment Committee. The Primary Sponsor may, by action in writing certified by notice to the Trustee, appoint an Investment Committee. The Primary Sponsor shall have the right to remove any person on the Investment Committee at any time by notice in writing to such person. A person on the Investment Committee may resign at any time by written notice of resignation to the Primary Sponsor. Upon such removal or resignation, or in the event of the death of a person on the Investment Committee, the Primary Sponsor may appoint a successor. Until a successor has been appointed, the remaining persons on the Investment Committee may continue to act as the Investment Committee.

11.7 Action by a Plan Sponsor. Any action to be taken by a Plan Sponsor shall be taken by resolution or written direction duly adopted by its board of directors or appropriate governing body, as the case may be; provided, however, that by such resolution or written direction, the board of directors or appropriate governing body, as the case may be, may delegate to any officer or other appropriate person of a Plan Sponsor the authority to take any such actions as may be specified in such resolution or written direction, other than the power to amend, modify or terminate the Plan or the Trust or to determine the basis of any Plan Sponsor contributions.

11.8 Corrective Action. Notwithstanding any provision of the Plan to the contrary, the Plan Sponsor may make corrective contributions, allocations, or distributions or take any other corrective action required to comply with, or otherwise permitted by, any program provided pursuant to applicable law, including without limitation the Employee Plans Compliance Resolution System or any successor guidance

11.9 Appeals Fiduciary. The Primary Sponsor shall appoint an Appeals Fiduciary. The Appeals Fiduciary shall be required to review claims for benefits payable due to a Participant's Disability that are initially denied by the Plan Administrator and for which the claimant requests a full and fair review pursuant to Section 12.3 and 12.4. The Appeals

Fiduciary may not be the individual who made the initial adverse determination with respect to any claim he reviews and may not be a subordinate of any individual who made the initial adverse determination. The Appeals Fiduciary may be removed in the same manner in which appointed or may resign at any time by written notice of resignation to the Primary Sponsor. Upon such removal or resignation, the Primary Sponsor shall appoint a successor.

SECTION 12
CLAIM REVIEW PROCEDURE

12.1 Notice of Denial. If a Participant or a Beneficiary is denied a claim for benefits under the Plan, the Plan Administrator shall provide to the claimant written notice of the denial within ninety (90) days (forty-five (45) days with respect to a denial of any claim for benefits due to the Participant's Disability) after the Plan Administrator receives the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90)-day or forty-five (45)-day period, as applicable. In no event shall the extension exceed a period of ninety (90) days (thirty (30) days with respect to a claim for benefits due to the Participant's Disability) from the end of such initial period. With respect to a claim for benefits due to the Participant's Disability, an additional extension of up to thirty (30) days beyond the initial thirty (30)-day extension period may be required for processing the claim. In such event, written notice of the extension shall be furnished to the claimant within the initial thirty (30)-day extension period. Any extension notice shall indicate the special circumstances requiring the extension of time, the date by which the Plan Administrator expects to render the final decision, the standards on which entitlement to benefits are based, the unresolved issues that prevent a decision on the claim and the additional information needed to resolve those issues.

12.2 Contents of Notice of Denial. If a Participant or Beneficiary is denied a claim for benefits under a Plan, the Plan Administrator shall provide to such claimant written notice of the denial which shall set forth:

- (a) the specific reasons for the denial;
- (b) specific references to the pertinent provisions of the Plan on which the denial is based;
- (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
- (d) an explanation of the Plan's claim review procedures, and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review;

(e) in the case of a claim for benefits due to a Participant's Disability, if an internal rule, guideline, protocol or other similar criterion is relied upon in making the adverse determination, either the specific rule, guideline, protocol or other similar criterion; or a statement that such rule, guideline, protocol or other similar criterion was relied upon in making the decision and that a copy of such rule, guideline, protocol or other similar criterion will be provided free of charge upon request; and

(f) in the case of a claim for benefits due to a Participant's Disability, if a denial of the claim is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment for the denial, an explanation applying the terms of the Plan to the claimant's medical circumstances or a statement that such explanation will be provided free of charge upon request.

12.3 Right to Review . After receiving written notice of the denial of a claim or that a domestic relations order is a qualified domestic relations order, a claimant or his representative shall be entitled to:

(a) request a full and fair review of the denial of the claim or determination that a domestic relations order is a qualified domestic relations order by written application to the Plan Administrator (or Appeals Fiduciary in the case of a claim for benefits payable due to a Participant's Disability);

(b) request, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim;

(c) submit written comments, documents, records, and other information relating to the denied claim to the Plan Administrator or Appeals Fiduciary, as applicable; and

(d) a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

12.4 Application for Review .

(a) If a claimant wishes a review of the decision denying his claim to benefits under the Plan, other than a claim described in Subsection (b) of this Section 12.4, or if a claimant wishes to appeal a decision that a domestic relations order is a qualified domestic relations order, he must submit the written application to the Plan Administrator within sixty (60) days after receiving written notice of the denial or notice that the domestic relations order is a qualified domestic relations order.

(b) If the claimant wishes a review of the decision denying his claim to benefits under the Plan due to a Participant's Disability, he must submit the written application to the Appeals Fiduciary within one hundred eighty (180) days after receiving

written notice of the denial. With respect to any such claim, in deciding an appeal of any denial based in whole or in part on a medical judgment (including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate), the Appeals Fiduciary shall

- (i) consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment; and
- (ii) identify the medical and vocational experts whose advice was obtained on behalf of the Plan in connection with the denial without regard to whether the advice was relied upon in making the determination to deny the claim.

Notwithstanding the foregoing, the health care professional consulted pursuant to this Subsection (b) shall be an individual who was not consulted with respect to the initial denial of the claim that is the subject of the appeal or a subordinate of such individual.

12.5 Hearing. Upon receiving such written application for review, the Plan Administrator or Appeals Fiduciary, as applicable, may schedule a hearing for purposes of reviewing the claimant's claim, which hearing shall take place not more than thirty (30) days from the date on which the Plan Administrator or Appeals Fiduciary received such written application for review.

12.6 Notice of Hearing. At least ten (10) days prior to the scheduled hearing, the claimant and his representative designated in writing by him, if any, shall receive written notice of the date, time, and place of such scheduled hearing. The claimant or his representative, if any, may request that the hearing be rescheduled, for his convenience, on another reasonable date or at another reasonable time or place.

12.7 Counsel. All claimants requesting a review of the decision denying their claim for benefits may employ counsel for purposes of the hearing.

12.8 Decision on Review. No later than sixty (60) days (forty-five (45) days with respect to a claim for benefits due to the Participant's Disability) following the receipt of the written application for review, the Plan Administrator or the Appeals Fiduciary, as applicable, shall submit its decision on the review in writing to the claimant involved and to his representative, if any, unless the Plan Administrator or Appeals Fiduciary determines that special circumstances (such as the need to hold a hearing) require an extension of time, to a day no later than one hundred twenty (120) days (ninety (90) days with respect to a claim for benefits due to the Participant's Disability) after the date of receipt of the written application for review. If the Plan Administrator or Appeals Fiduciary determines that the extension of time is required, the Plan Administrator or Appeals Fiduciary shall furnish to the claimant written notice of the extension before the expiration of the initial sixty (60) day (forty-five (45) days with respect to a claim for benefits due to the Participant's Disability) period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan

Administrator or Appeals Fiduciary expects to render its decision on review. In the case of a decision adverse to the claimant, the Plan Administrator or Appeals Fiduciary shall provide to the claimant written notice of the denial which shall include:

- (a) the specific reasons for the decision;
- (b) specific references to the pertinent provisions of the Plan on which the decision is based;
- (c) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- (d) an explanation of the Plan's claim review procedures, and the time limits applicable to such procedures, including a statement of the claimant's right to bring an action under Section 502(a) of ERISA following the denial of the claim upon review;
- (e) in the case of a claim for benefits due to the Participant's Disability, if an internal rule, guideline, protocol or other similar criterion is relied upon in making the adverse determination, either the specific rule, guideline, protocol or other similar criterion; or a statement that such rule, guideline, protocol or other similar criterion was relied upon in making the decision and that a copy of such rule, guideline, protocol or other similar criterion will be provided free of charge upon request;
- (f) in the case of a claim for benefits due to a Participant's Disability, if a denial of the claim is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment for the denial, an explanation applying the terms of the Plan to the claimant's medical circumstances or a statement that such explanation will be provided free of charge upon request; and
- (g) in the case of a claim for benefits due to a Participant's Disability, a statement regarding the availability of other voluntary alternative dispute resolution options.

SECTION 13
INCOMPETENT DISTRIBUTE AND UNCLAIMED PAYMENTS

13.1 Anti-Alienation. No benefit which shall be payable under the Plan to any person shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person, nor shall it be subject to attachment or legal process for, or against, such person, and the same shall not be recognized under the Plan, except to such extent as may be required by law. Notwithstanding the above, this Section shall not apply to a "qualified domestic relations order" (as defined in Code Section 414(p)), and benefits may be paid pursuant to the provisions of such an order. The Plan

Administrator shall develop procedures (in accordance with applicable federal regulations) to determine whether a domestic relations order is qualified, and, if so, the method and the procedures for complying therewith. In addition, a distribution to an "alternate payee" (as defined in Code Section 414(p)) shall be permitted if such distribution is authorized by a qualified domestic relations order, even if the affected Participant has not yet separated from service or reached the "earliest retirement age" (as defined in Code Section 414(p)).

13.2 Exceptions to Anti-Alienation. Notwithstanding any other provision of the Plan, the benefit of a Participant shall be subject to legal process and may be assigned, alienated or attached pursuant to a court judgment or settlement provided:

(a) such Participant is ordered or required to pay the Plan in accordance with the following:

(1) a judgment or conviction for a crime involving the Plan;

(2) a civil judgment entered by a court in an action brought in connection with a violation of part 4 of subtitle B of Title I of ERISA;
or

(3) a settlement agreement between such Participant and the Secretary of Labor, in connection with a violation (or alleged violation) of part 4 of subtitle B of Title I of ERISA by a fiduciary or any other person; and

(b) the judgment, order, decree, or settlement agreement shall expressly provide for the offset of all or part of the amount ordered or required to be paid to the Plan against such Participant's benefits under the Plan.

13.3 Attempts to Alienate. If any person who shall be entitled to any benefit under the Plan shall become bankrupt or shall attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge such benefit under the Plan, then the payment of any such benefit in the event a Participant or Beneficiary is entitled to payment shall, in the discretion of the Plan Administrator, cease and terminate and in that event the Trustee shall hold or apply the same for the benefit of such person, his spouse, children, other dependents or any of them in such manner and in such proportion as the Plan Administrator shall determine.

13.4 Minors and Incompetents. Whenever any benefit which shall be payable under the Plan is to be paid to or for the benefit of any person who is then a minor or determined to be incompetent by qualified medical advice, the Plan Administrator need not require the appointment of a guardian or custodian, but shall be authorized to cause the same to be paid over to the person having custody of such minor or incompetent, or to cause the same to be paid to such minor or incompetent without the intervention of a guardian or custodian, or to cause the same to be paid to a legal guardian or custodian of such minor or incompetent if one has been appointed or to cause the same to be used for the benefit of such minor or incompetent.

13.5 Missing Participants. If the Plan Administrator cannot ascertain the whereabouts of any Participant to whom a payment is due under the Plan, the Plan Administrator may direct

that the payment and all remaining payments otherwise due to the Participant be cancelled on the records of the Plan and the amount thereof applied as a forfeiture in accordance with applicable Plan provisions, except that, in the event the Participant later notifies the Plan Administrator of his whereabouts and requests the payments due to him under the Plan, the forfeited amount shall be restored either from Trust income or by a special contribution by the Plan Sponsor to the Plan, as determined by the Plan Administrator, in an amount equal to the payment to be paid to the Participant.

SECTION 14
PROHIBITION AGAINST DIVERSION

At no time shall any part of the Fund be used for or diverted to purposes other than the exclusive benefit of the Participants or their Beneficiaries, subject, however, to the payment of all taxes and administrative expenses and subject to the provisions of the Plan with respect to returns of contributions. Expenses incurred in the administration of the Plan shall be paid from the Trust, to the extent permitted by ERISA, unless such expenses are paid by a Plan Sponsor; provided, further, that a Plan Sponsor may be reimbursed by the Fund, to the extent permitted by ERISA, for Plan expenses originally paid by the Plan Sponsor.

SECTION 15
LIMITATION OF RIGHTS

Participation in the Plan shall not give any Employee any right or claim except to the extent that such right is specifically fixed under the terms of the Plan. The adoption of the Plan and the Trust by any Plan Sponsor shall not be construed to give any Employee a right to be continued in the employ of a Plan Sponsor or as interfering with the right of a Plan Sponsor to terminate the employment of any Employee at any time.

SECTION 16
AMENDMENT TO OR TERMINATION OF THE
PLAN AND THE TRUST

16.1 Right of Primary Sponsor to Amend or Terminate. The Primary Sponsor reserves the right at any time to modify or amend or terminate the Plan or the Trust in whole or in part; provided, however, that the Primary Sponsor shall have no power to modify or amend the Plan in such manner as would cause or permit any portion of the funds held under a Plan to be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, or as would cause or permit any portion of a fund held under the Plan to become the property of a Plan Sponsor; and provided further, that the duties or liabilities of the Trustee shall not be increased without its written consent. No such modifications or amendments shall have the effect of retroactively changing or depriving Participants or Beneficiaries of rights already accrued under the Plan. No Plan Sponsor other than the Primary Sponsor shall have the right to so modify, amend or terminate the Plan or the Trust. Notwithstanding the foregoing, each Plan Sponsor may terminate its own participation in the Plan and Trust pursuant to the Plan.

16.2 Right of Plan Sponsor to Terminate Participation. Each Plan Sponsor other than the Primary Sponsor shall have the right to terminate its participation in the Plan and Trust by resolution of its board of directors or other appropriate governing body and notice in writing to the Primary Sponsor and the Trustee unless such termination would result in the disqualification of the Plan or the Trust or would adversely affect the exempt status of the Plan or the Trust as to any other Plan Sponsor. If contributions by or on behalf of a Plan Sponsor are completely terminated, the Plan and Trust shall be deemed terminated as to such Plan Sponsor. Any termination by a Plan Sponsor, shall not be a termination as to any other Plan Sponsor. The Primary Sponsor may, in its absolute discretion, terminate the participation of any other Plan Sponsor at any time.

16.3 Plan Termination.

(a) If the Plan is terminated by the Primary Sponsor or if contributions to the Trust should be permanently discontinued, it shall terminate as to all Plan Sponsors and the Fund shall be used, subject to the payment of expenses and taxes, for the benefit of Participants and Beneficiaries, and for no other purposes, and the Account of each affected Participant shall be fully vested and nonforfeitable, notwithstanding the provisions of the Section of the Plan which sets forth the vesting schedule.

(b) In the event of the partial termination of the Plan, each affected Participant's Account shall be fully vested and nonforfeitable.

16.4 Payments Upon Plan Termination. In the event of the termination of the Plan or the Trust with respect to a Plan Sponsor, the Accounts of the Participants with respect to the Plan as adopted by such Plan Sponsor shall be distributed in accordance with the applicable distribution provisions of the Plan pursuant to the instructions of the Plan Administrator; provided that the Trustee shall not be required to make any distribution until it receives a copy of an Internal Revenue Service determination letter to the effect that the termination does not affect the qualified status of the Plan or the exempt status of the Trust or, in the event that such letter is applied for and is not issued, until the Trustee is reasonably satisfied that adequate provision has been made for the payment of all taxes which may be due and owing by the Trust.

16.5 Plan Merger. In the case of any merger or consolidation of the Plan with, or any transfer of the assets or liabilities of the Plan to, any other plan qualified under Code Section 401, the terms of the merger, consolidation or transfer shall be such that each Participant would receive (in the event of termination of the Plan or its successor immediately thereafter) a benefit which is no less than the benefit which the Participant would have received in the event of termination of the Plan immediately before the merger, consolidation or transfer.

16.6 Optional Benefits. Notwithstanding any other provision of the Plan, an amendment to the Plan –

(a) which eliminates or reduces an early retirement benefit, if any, or which eliminates or reduces a retirement-type subsidy (as defined in regulations issued by the Department of the Treasury), if any, or

(b) which eliminates an optional form of benefit

shall not be effective with respect to benefits attributable to service before the amendment is adopted (except as otherwise provided in regulations issued by the Department of the Treasury). In the case of a retirement-type subsidy described in Subsection (a) above, this Section shall be applicable only to a Participant who satisfies, either before or after the amendment, the preamendment conditions for the subsidy.

SECTION 17
ADOPTION OF PLAN BY AFFILIATES

Any corporation or other business entity related to the Primary Sponsor by function or operation and any Affiliate, if the corporation, business entity or Affiliate is authorized to do so by written direction adopted by the Board of Directors, may adopt the Plan and the related Trust by action of the board of directors or other appropriate governing body of such corporation, business entity or Affiliate. Any adoption shall be evidenced by certified copies of the resolutions of the foregoing board of directors or governing body indicating the adoption and by the execution of the Trust by the adopting corporation, or business entity or Affiliate. The resolution shall state and define the effective date of the adoption of the Plan by the Plan Sponsor and, for the purpose of Code Section 415, the "limitation year" as to such Plan Sponsor, if different than the Plan Year. Notwithstanding the foregoing, however, if the Plan and Trust as adopted by an Affiliate or other corporation or business entity under the foregoing provisions shall fail to receive the initial approval of the Internal Revenue Service as a qualified Plan and Trust under Code Sections 401(a) and 501(a), any contributions by the Affiliate or other corporation or business entity after payment of all expenses will be returned to such Plan Sponsor free of any trust, and the Plan and Trust shall terminate, as to the adopting Affiliate or other corporation or business entity.

SECTION 18
QUALIFICATION AND RETURN OF CONTRIBUTIONS

18.1 Initial Qualification Failure. If the Plan and the related Trust fail to receive the initial approval of the Internal Revenue Service as a qualified plan and trust within one (1) year after the date of denial of qualification (a) the contribution of a Plan Sponsor after payment of all expenses will be returned to a Plan Sponsor free of the Plan and Trust, (b) contributions made by a Participant shall be returned to the Participant who made the contributions, and (c) the Plan and Trust shall thereupon terminate.

18.2 Deductibility. All Plan Sponsor contributions to the Plan are contingent upon deductibility. To the extent permitted by the Code and other applicable laws and regulations thereunder, upon a Plan Sponsor's request, a contribution which was made by reason of a mistake of fact or which was nondeductible under Code Section 404, shall be returned to a Plan Sponsor within one (1) year after the payment of the contribution, or the disallowance of the deduction (to the extent disallowed), whichever is applicable.

In the event of a contribution which was made by reason of a mistake of fact or which was nondeductible, the amount to be returned to the Plan Sponsor shall be the excess of the contribution above the amount that would have been contributed had the mistake of fact or the mistake in determining the deduction not occurred, less any net loss attributable to the excess. Any net income attributable to the excess shall not be returned to the Plan Sponsor. No return of any portion of the excess shall be made to the Plan Sponsor if the return would cause the balance in a Participant's Account to be less than the balance would have been had the mistaken contribution not been made.

SECTION 19
INCORPORATION OF SPECIAL LIMITATIONS

Appendices A, B, C, D and E to the Plan, attached hereto, are incorporated by reference and the provisions of the same shall apply notwithstanding anything to the contrary contained herein.

IN WITNESS WHEREOF, the Primary Sponsor has caused this indenture to be executed as of the date first above written.

TYSON FOODS, INC.

By: /s/ Dennis Leatherby

Title: Exec. Vice President and Chief Financial Officer

ATTEST: /s/ R. Read Hudson

Title: V.P., Associate General Counsel and Secretary

APPENDIX A
LIMITATION ON ALLOCATIONS

SECTION 1

Except to the extent permitted under Plan Section 3.1(c) and Code Section 414(v), if applicable, the “annual addition” for any Participant for any one limitation year may not exceed the lesser of:

- (a) \$46,000 (for the 2008 Plan Year), as adjusted under Code Section 415(d); or
- (b) 100% of the Participant’s Annual Compensation.

The limit described in Subsection (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or 419A(f)(2)) which is otherwise treated as an annual addition.

SECTION 2

(a) For the purposes of this Appendix A, the term “annual addition” for any Participant means for any limitation year, the sum of certain Plan Sponsor, Affiliate, and Participant contributions, forfeitures, and other amounts as determined in Code Section 415(c)(2) in effect for that limitation year.

(b) Participant contributions shall be determined without regard to:

- (1) Rollover Amounts;
- (2) repayments of loans made to a Participant from a plan;
- (3) catch-up contributions as described in Code Section 414(v);
- (4) repayments of amounts described in Code Section 411(a)(7)(B) (in accordance with Code Section 411(a)(7)(C)) and Section 411(a)(3)(D) or repayments of contributions to a governmental plan (as defined in Code Section 414(d)) as described in Code Section 415(k)(3);
- (5) repayments that would have been described in Paragraph (4) except that the plan to which such repayment is being made does not restrict the timing of repayments to the maximum extent permitted by Code Section 411(a);
- (6) employee contributions to a qualified cost of living arrangement within the meaning of Code Section 415(k)(2)(B); and

(7) a payment described in Treasury Regulation Section 1.415(c)-1(b)(2)(ii)(C) made to restore losses to a plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of a fiduciary duty under Title I of ERISA or under other applicable federal or state law, where plan participants who are similarly situated are treated similarly with respect to the payments

SECTION 3

For purposes of this Appendix A, the term "limitation year" shall mean a Plan Year unless a Plan Sponsor elects, by adoption of a written resolution, to use any other twelve month period adopted in accordance with regulations issued by the Secretary of the Treasury.

SECTION 4

For purposes of applying the limitations of this Appendix A, all defined contribution plans maintained or deemed to be maintained by a Plan Sponsor shall be treated as one defined contribution plan, and all defined benefit plans now or previously maintained or deemed to be maintained by a Plan Sponsor shall be treated as one defined benefit plan. In the event any of the actions to be taken pursuant to Section 5 of this Appendix A or pursuant to any language of similar import in another defined contribution plan are required to be taken as a result of the annual additions of a Participant exceeding the limitations set forth in Section 1 of this Appendix A, because of the Participant's participation in more than one defined contribution plan, the actions shall be taken first with regard to this Plan.

SECTION 5

In the event that as a result of the allocation of forfeitures to the Account of a Participant, a reasonable error in estimating the Participant's Annual Compensation, a reasonable error in determining the amount of Elective Deferrals, or other similar circumstances, the annual addition allocated to the Account of a Participant exceeds the limitations set forth in Section 1 of this Appendix A, the Plan Administrator shall, in writing, direct the Trustee to take such actions as are permitted by the Internal Revenue Service for the correction of such errors as the Plan Administrator shall deem appropriate, specifying in each case the amount or amounts of contributions involved. Notwithstanding anything contained in the Plan to the contrary, the Plan Administrator may modify any such action with respect to reduction of Participants' Accounts in accordance with such procedures as the Plan Administrator may establish with respect to catch-up contributions as described in Code Section 414(v).

SECTION 6

The provisions of this Appendix A shall be construed in a manner consistent with the provisions of final Treasury Regulations issued under Code Section 415 and any successor guidance.

APPENDIX B
TOP-HEAVY PROVISIONS

SECTION 1

As used in this Appendix B, the following words shall have the following meanings:

(a) “Determination Date” means, with respect to any Plan Year, the last day of the preceding Plan Year, or, in the case of the first Plan Year, means the last day of the first Plan Year.

(b) “Key Employee” means an Employee or former Employee (including a Beneficiary of a Key Employee or former Key Employee) who at any time during the Plan Year containing the Determination Date was:

(1) an officer of the Plan Sponsor or any Affiliate whose Annual Compensation was greater than \$150,000 (as adjusted for changes in the cost of living as provided in regulations issued by the Secretary of the Treasury) for the calendar year in which the Plan Year ends, where the term “officer” means an administrative executive in regular and continual service to the Plan Sponsor or an Affiliate; provided, however, that in no event shall the number of officers exceed the lesser of (A) fifty (50) employees; or (B) the greater of (I) three (3) employees or (II) ten percent (10%) of the number of Employees during the Plan Year, with any non-integer being increased to the next integer. If for any year, no officer of the Plan Sponsor meets the requirements of this Subparagraph (1), the highest paid officer of the Plan Sponsor for the Plan Year shall be considered an officer for purposes of this Subparagraph (1);

(2) an owner of more than five percent (5%) of the outstanding stock of the Plan Sponsor or an Affiliate or more than five percent (5%) of the total combined voting power of all stock of the Plan Sponsor or an Affiliate; or

(3) an owner of more than one percent (1%) of the outstanding stock of the Plan Sponsor or an Affiliate or more than one percent (1%) of the total combined voting power of all stock of the Plan Sponsor or an Affiliate, and who in such Plan Year had Annual Compensation from the Plan Sponsor and all of its Affiliates of more than \$150,000.

For purposes of determining ownership under Subsections (2) and (3) above, the rules set forth in Code Section 318(a)(2) shall be applied as follows (i) in the case of any Plan Sponsor or Affiliate which is a corporation, by substituting five percent (5%) for fifty percent (50%) and, (ii) in the case of any Plan Sponsor or Affiliate which is not a corporation, ownership shall be determined in accordance with Treasury Regulations which shall be based on principles similar to the principles of Code Section 318 (modified as described in Clause (i) above).

Employees other than Key Employees are sometimes referred to in this Appendix B as “non-key employees.”

(c) “Required Aggregation Group” means:

(1) each plan of the Plan Sponsor and its Affiliates which qualifies under Code Section 401 (a) in which a Key Employee is a participant, and

(2) each other plan of the Plan Sponsor and its Affiliates which qualifies under Code Section 401 (a) and which enables any plan described in Subsection (a) of this Section to meet the requirements of Section 401(a)(4) or 410 of the Code.

(d) (1) “Top-Heavy” means:

(A) if the Plan is not included in a Required Aggregation Group, the Plan’s condition in a Plan Year for which, as of the Determination Date:

(i) the present value of the cumulative Accounts (excluding catch-up contributions as described in Code Section 414(v) made in the Plan Year in which the determination is being made) under the Plan for all Key Employees exceeds sixty percent (60%) of the present value of the cumulative Accounts (excluding catch-up contributions as described in Code Section 414(v) for the current Plan Year) under the Plan for all Participants; and

(ii) the Plan, when included in every potential combination, if any, with any or all of:

(I) any Required Aggregation Group, and

(II) any plan of the Plan Sponsor which is not part of any Required Aggregation Group and which qualifies under Code Section 401(a);

is part of a Top-Heavy Group (as defined in Paragraph (2) of this Subsection); and

(B) if the Plan is included in a Required Aggregation Group, the Plan’s condition in a Plan Year for which, as of the Determination Date:

(i) the Required Aggregation Group is a Top-Heavy Group (as defined in Paragraph (2) of this Subsection); and

(ii) the Required Aggregation Group, when included in every potential combination, if any, with any or all of the plans of the Plan Sponsor and its Affiliates which are not part of the Required Aggregation Group and which qualify under Code Section 401(a), is part of a Top-Heavy Group (as defined in Paragraph (2) of this Subsection).

(C) For purposes of Subparagraphs (A)(ii) and (B)(ii) of this Paragraph (1), any combination of plans must satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

(2) A group shall be deemed to be a Top-Heavy Group if:

(A) the sum, as of the Determination Date, of the present value of the cumulative accrued benefits for all Key Employees under all plans included in such group exceeds

(B) sixty percent (60%) of a similar sum determined for all participants in such plans.

(3) (A) For purposes of this Section, the present value of the accrued benefit for any participant in a defined contribution plan as of any Determination Date or last day of a plan year shall be the sum of:

(i) as to any defined contribution plan other than a simplified employee pension, the account balance as of the most recent valuation date occurring within the plan year ending on the Determination Date or last day of a plan year, and

(ii) as to any simplified employee pension, the aggregate employer contributions, and

(iii) an adjustment for contributions due as of the Determination Date or last day of a plan year.

In the case of a plan that is not subject to the minimum funding requirements of Code Section 412, the adjustment in Clause (iii) of this Subparagraph (A) shall be the amount of any contributions actually made after the valuation date but on or before the Determination Date or last day of the plan year to the extent not included under Clause (i) or (ii) of this Subparagraph (A); provided, however, that in the first plan year of the plan, the adjustment in Clause (iii) of this Subparagraph (A) shall also reflect the amount of any contributions made thereafter that are allocated as of a date in such first plan year. In the case of a plan that is subject to the minimum funding requirements, the account balance in Clause (i) and the aggregate contributions in Clause (ii) of this Subparagraph (A) shall

include contributions that would be allocated as of a date not later than the Determination Date or last day of a plan year, even though those amounts are not yet required to be contributed, and the adjustment in Clause (iii) of this Subparagraph (A) shall be the amount of any contribution actually made (or due to be made) after the valuation date to the extent permitted by regulations or other guidance of general applicability to the extent not included under Clause (i) or (ii) of this Subparagraph (A).

(B) For purposes of this Subsection, the present value of the accrued benefit for any participant in a defined benefit plan as of any Determination Date or last day of a plan year must be determined as of the most recent valuation date which is within a twelve (12) month period ending on the Determination Date or last day of a plan year as if such participant terminated as of such valuation date; provided, however, that in the first plan year of a plan, the present value of the accrued benefit for a current participant must be determined either (i) as if the participant terminated service as of the Determination Date or last day of a plan year or (ii) as if the participant terminated service as of such valuation date, but taking into account the estimated accrued benefit as of the Determination Date or last day of a plan year. For purposes of this Subparagraph (B), the valuation date must be the same valuation date used for computing plan costs for minimum funding, regardless of whether a valuation is performed that year. The actuarial assumptions utilized in calculating the present value of the accrued benefit for any participant in a defined benefit plan for purposes of this Subparagraph (B) shall be established by the Plan Administrator after consultation with the actuary for the plan, and shall be reasonable in the aggregate and shall comport with the requirements set forth by the Internal Revenue Service in Q&A T-26 and T-27 of Regulation Section 1.416-1.

(C) For purposes of determining the present value of the cumulative accrued benefit under a plan for any Participant in accordance with this Subsection, the present value shall be increased by the aggregate distributions made with respect to the Participant (including distributions paid on account of death to the extent they do not exceed the present value of the cumulative accrued benefit existing immediately prior to death) under each plan being considered, and under any terminated plan which if it had not been terminated would have been in a Required Aggregation Group with the Plan, during the one-year period ending on the Determination Date or the last day of the Plan Year that falls within the calendar year in which the Determination Date falls. In the case of a distribution made with respect to a Participant made for a reason other than severance from employment, death, or disability, this provision shall apply by substituting a five-year period for the one-year period.

(D) For purposes of this Paragraph (3), participant contributions which are deductible as “qualified retirement contributions” within the meaning of Code Section 219 or any successor, as adjusted to reflect income, gains, losses, and other credits or charges attributable thereto, shall not be considered to be part of the accrued benefits under any plan.

(E) For purposes of this Paragraph (3), if any employee is not a Key Employee with respect to any plan for any plan year, but such employee was a Key Employee with respect to such plan for any prior plan year, any accrued benefit for such employee shall not be taken into account.

(F) For purposes of this Paragraph (3), if any Employee has not performed any service for a Plan Sponsor or an Affiliate maintaining the Plan during the one-year period ending on the Determination Date, any accrued benefit for that Employee shall not be taken into account.

(G) (i) In the case of an “unrelated rollover” (as defined below) between plans which qualify under Code Section 401(a), (a) the plan providing the distribution shall count the distribution as a distribution under Subparagraph (C) of this Paragraph (3), and (b) the plan accepting the distribution shall not consider the distribution part of the accrued benefit under this Section; and

(ii) in the case of a “related rollover” (as defined below) between plans which qualify under Code Section 401(a), (a) the plan providing the distribution shall not count the distribution as a distribution under Subparagraph (C) of this Paragraph (3), and (b) the plan accepting the distribution shall consider the distribution part of the accrued benefit under this Section.

For purposes of this Subparagraph (G), an “unrelated rollover” is a rollover as defined in Code Section 402(c)(4) or 408(d)(3) or a plan-to-plan transfer which is both initiated by the participant and made from a plan maintained by one employer to a plan maintained by another employer where the employers are not Affiliates. For purposes of this Subparagraph (G), a “related rollover” is a rollover as defined in Code Section 402(c)(4) or 408(d)(3) or a plan-to-plan transfer which is either not initiated by the participant or made to a plan maintained by the employer or an Affiliate.

SECTION 2

(a) Notwithstanding anything contained in the Plan to the contrary, except as otherwise provided in Subsection (b) of this Section, in any Plan Year during which the Plan is Top-Heavy, allocations of Plan Sponsor contributions and forfeitures for the Plan Year for the Account of each Participant who is not a Key Employee and who has not separated from service with the Plan Sponsor prior to the end of the Plan Year shall not be less than three percent (3%) percent of the Participant's Annual Compensation. For purposes of this Subsection, an allocation to a Participant's Account resulting from any Plan Sponsor contribution attributable to a salary reduction or similar arrangement shall not be taken into account.

(b) (1) The percentage referred to in Subsection (a) of this Section for any Plan Year shall not exceed the percentage at which allocations are made or are required to be made under the Plan for the Plan Year for the Key Employee for whom the percentage is highest for a Plan Year. For purposes of this Paragraph, an allocation to the Account of a Key Employee resulting from any Plan Sponsor contribution attributable to a salary reduction or similar agreement shall be taken into account but allocations of catch-up contributions as described in Code Section 414(v) shall not be taken into account.

(2) For purposes of this Subsection (b), all defined contribution plans which are members of a Required Aggregation Group shall be treated as part of the Plan.

(3) This Subsection (b) shall not apply to any plan which is a member of a Required Aggregation Group if the plan enables a defined benefit plan which is a member of the Required Aggregation Group to meet the requirements of Code Section 401(a)(4) or 410.

SECTION 3

Notwithstanding anything contained in the Plan to the contrary, in any Plan Year during which the Plan is Top-Heavy, a Participant's interest in his Account shall not vest at any rate which is slower than the following schedule, effective as of the first day of that Plan Year:

<u>Full Years of Vesting Service</u>	<u>Percentage Vested</u>
Less than 2 years	0%
2 years	20%
3 years	40%
4 years	60%
5 years	80%
6 years	100%

The Schedule set forth above in this Section 4 shall be inapplicable to a Participant who has failed to perform an Hour of Service after the Determination Date on which the Plan has become Top-Heavy. When the Plan ceases to be Top-Heavy, the Schedule set forth above shall cease to apply; provided however, that the provisions of the Plan Section dealing with changes in the vesting schedule shall apply.

APPENDIX C
SPECIAL NONDISCRIMINATION RULES

The Plan is intended to satisfy the requirements of Code Section 401(k)(12) with respect to contributions under Section 3.1 and Code Section 401(m)(11) with respect to contributions under Section 3.2. The Plan Sponsor will make Matching Contributions pursuant to Section 3.2, which are intended to satisfy the safe harbor requirements of Treasury Regulations Sections 1.401(k)-3 and 1.401(m)-3. Accordingly, this Appendix C is not applicable for any Plan Year during which the Plan Sponsor intends the Plan to satisfy the safe harbor requirements of Treasury Regulations Sections 1.401(k)-3 and 1.401(m)-3.

SECTION 1

As used in this Appendix, the following words shall have the following meanings:

- (a) “Eligible Participant” means a Participant who is an Employee during any particular Plan Year.
- (b) “Highly Compensated Eligible Participant” means any Eligible Participant who is a Highly Compensated Employee.
- (c) “Matching Contribution” means any contribution made by a Plan Sponsor to a Matching Account and any other contribution made to a plan by a Plan Sponsor or an Affiliate on behalf of an Employee on account of a contribution made by an Employee or on account of an Elective Deferral.
- (d) “Qualified Matching Contributions” means Matching Contributions which are immediately nonforfeitable when made, and which would be nonforfeitable, regardless of the age or service of the Employee or whether the Employee is employed on a certain date, and which may not be distributed, except upon one of the events described under Section 401(k)(2)(B) of the Code and the regulations thereunder.
- (e) “Qualified Nonelective Contributions” means contributions of the Plan Sponsor or an Affiliate, other than Matching Contributions or Elective Deferrals, which are nonforfeitable when made, and which would be nonforfeitable regardless of the age or service of the Employee or whether the Employee is employed on a certain date, and which may not be distributed, except upon one of the events described under Code Section 401(k)(2)(B) and the regulations thereunder.

SECTION 2

In addition to any other limitations set forth in the Plan, for each Plan Year one of the following tests must be satisfied:

(a) the actual deferral percentage for the Highly Compensated Eligible Participants for the Plan Year must not be more than the actual deferral percentage of all other Eligible Participants for the Plan Year multiplied by 1.25; or

(b) the excess of the actual deferral percentage for the Highly Compensated Eligible Participants for the Plan Year over that of all other Eligible Participants for such Plan Year must not be more than two (2) percentage points, and the actual deferral percentage for the Highly Compensated Eligible Participants for the Plan Year must not be more than the actual deferral percentage of all other Eligible Participants for the Plan Year multiplied by two (2).

The “actual deferral percentage” for the Highly Compensated Eligible Participants and all other Eligible Participants for a Plan Year is the average in each group of the ratios, calculated separately for each Employee, of the Deferral Amounts contributed by the Plan Sponsor on behalf of an Employee for the Plan Year to the Annual Compensation of the Employee in the Plan Year. In addition, for purposes of calculating the “actual deferral percentage” as described above, Deferral Amounts of Employees who are not Highly Compensated Employees which are prohibited by Code Section 401(a)(30) shall not be taken into consideration. Except to the extent limited by Treasury Regulation section 1.401(k)-2(a)(6) and any other applicable regulations promulgated by the Secretary of the Treasury, all or part of the Qualified Matching Contributions and Qualified Nonelective Contributions (other than Qualified Nonelective Contributions that are treated as Matching Contributions pursuant to Section 5 of Appendix C) made pursuant to the Plan may be treated as Deferral Amounts for purposes of determining the “actual deferral percentage.” The Plan Sponsor may in its sole discretion contribute Qualified Nonelective Contributions or Qualified Matching Contributions with respect to a Plan Year, provided the contributions are made no later than the last day of the Plan Year following the Plan Year for which the Qualified Nonelective Contributions or Qualified Matching Contributions are made.

SECTION 3

If the Deferral Amounts contributed on behalf of any Highly Compensated Eligible Participant exceeds the amount permitted under the “actual deferral percentage” test described in Section 2 of this Appendix C for any given Plan Year, then before the end of the Plan Year following the Plan Year for which the Excess Deferral Amount was contributed, the portion of the Excess Deferral Amount for the Plan Year attributable to a Highly Compensated Participant, as adjusted in accordance with applicable Treasury Regulations to reflect income, gain, or loss attributable to it for the Plan Year for which the test is being performed and reduced by any excess Elective Deferrals as determined pursuant to Section 3.1 previously distributed to a Participant for the Participant’s taxable year ending with or within the Plan Year, may be distributed to the Highly Compensated Eligible Participant. The income, gain or loss allocable to such Excess Deferral Amount shall be determined in a similar manner as described in Section 4.2 of the Plan or in any other manner permitted by applicable Treasury Regulations. The Excess Deferral Amount to be distributed shall be reduced by Deferral Amounts previously distributed for the taxable year ending in the same Plan Year, and shall also be reduced by Deferral Amounts previously distributed for the Plan Year beginning in such taxable year. The portion of

the Matching Contribution on which such Excess Deferral Amount was based shall be forfeited upon the distribution of such Excess Deferral Amount.

Notwithstanding the foregoing, if the Plan satisfies the actual deferral percentage test through correction by distribution of Excess Deferral Amounts for any Plan Year, any Excess Deferral Amounts attributable to a Highly Compensation Eligible Participant who is eligible to make catch-up contributions pursuant to Section 3.1(c) of the Plan, subject to the limitations of Code Section 414(v), shall be retained in the Plan and treated as catch-up contributions under the Plan. To the extent that the Excess Deferral Amount would exceed the applicable dollar amount specified in Code Section 414(v), as adjusted, such amount shall be distributed in accordance with the foregoing provisions of this Section 3.

(a) For purposes of this Section 3, "Excess Deferral Amount" means, with respect to a Plan Year, the excess of:

(1) the aggregate amount of Deferral Amounts contributed by a Plan Sponsor on behalf of Highly Compensated Eligible Participants for the Plan Year, over

(2) the maximum amount of Deferral Amounts permitted under Section 2 of this Appendix C for the Plan Year, which shall be determined by reducing the Deferral Amounts contributed on behalf of Highly Compensated Eligible Participants in order of the actual deferral percentages beginning with the highest of such percentages.

(b) Distribution of the Excess Deferral Amount for any Plan Year shall be made to Highly Compensated Eligible Participants on the basis of the dollar amount of Deferral Amounts attributable to each Highly Compensated Eligible Participant. The Plan Sponsor shall determine the amount of Excess Deferral Amounts which shall be distributed to each Highly Compensated Eligible Participant as follows.

(1) The Deferral Amounts allocated to the Highly Compensated Eligible Participant with the highest dollar amount of Deferral Amounts for the Plan Year shall be reduced by the amount required to cause that Highly Compensated Eligible Participant's remaining Deferral Amounts for the Plan Year to be equal to the dollar amount of the Deferral Amounts allocated to the Highly Compensated Eligible Participant with the next highest dollar amount of Deferral Amounts for the Plan Year. This amount is then distributed to the Highly Compensated Eligible Participant with the highest dollar amount of Deferral Amounts, unless a smaller reduction, when added to the total dollar amount already distributed pursuant to this Paragraph (1), equals the total Excess Deferral Amounts.

(2) If the total amount distributed under Paragraph (1) of this Section 3(b) is less than the total Excess Deferral Amounts, the procedure in Paragraph (1) shall be successively repeated until the total dollar amount distributed is equal to the

total Excess Deferral Amounts attributable to Highly Compensated Eligible Participants.

If a distribution of the Excess Deferral Amounts attributable to the Highly Compensated Eligible Participants is made in accordance with Paragraphs (1) and (2) of this Section 3(b), the limitations in Section 2 of this Appendix C shall be treated as being met regardless of whether the actual deferral percentage, if recalculated after such distributions, would have satisfied the requirements of Section 2.

SECTION 4

The Plan Administrator shall have the responsibility of monitoring the Plan's compliance with the limitations of this Appendix C and shall have the power to take all steps it deems necessary or appropriate to ensure compliance, including, without limitation, restricting the amount which Highly Compensated Eligible Participants can elect to have contributed pursuant to Plan Section 3.1(a). Any actions taken by the Plan Administrator pursuant to this Section 4 shall be pursuant to non-discriminatory procedures consistently applied.

SECTION 5

In addition to any other limitations set forth in the Plan, Matching Contributions under the Plan and the amount of nondeductible employee contributions under the Plan, for each Plan Year must satisfy one of the following tests:

(a) The contribution percentage for Highly Compensated Eligible Participants for the Plan Year must not exceed 125% of the contribution percentage for all other Eligible Participants for the Plan Year; or

(b) The contribution percentage for Highly Compensated Eligible Participants for the Plan Year must not exceed the lesser of (1) 200 % of the contribution percentage for all other Eligible Participants for the Plan Year, and (2) the contribution percentage for all other Eligible Participants for the Plan Year plus two (2) percentage points.

Notwithstanding the foregoing, for purposes of this Section 5, the terms Highly Compensated Eligible Participant and Eligible Participant shall not include any Participant who is not eligible to receive a Matching Contribution under the provisions of the Plan, other than as a result of the Participant failing to contribute to the Plan or failing to have an Elective Deferral contributed to the Plan on the Participant's behalf. The "contribution percentage" for Highly Compensated Eligible Participants and for all other Eligible Participants for a Plan Year shall be the average of the ratios, calculated separately for each Participant, of (A) to (B), where (A) is the amount of Matching Contributions under the Plan (excluding Qualified Matching Contributions which are used to apply the test set forth in Section 2 of this Appendix C) and nondeductible employee contributions made under the Plan for the Eligible Participant for the Plan Year, and where (B) is the Annual Compensation of the Eligible Participant for the Plan

Year. Except to the extent limited by Treasury Regulation Section 1.401(m)-2(a)(6) and any other applicable regulations promulgated by the Secretary of the Treasury, a Plan Sponsor may elect to treat Deferral Amounts and Qualified Nonelective Contributions as Matching Contributions for purpose of determining the "contribution percentage," provided the Deferral Amounts, excluding those treated as Matching Contributions, satisfy the test set forth in Section 2 of Appendix C.

The Plan Sponsor may in its sole discretion contribute Qualified Nonelective Contributions or Qualified Matching Contributions with respect to a Plan Year, provided the contributions are made no later than the last day of the Plan Year following the Plan Year for which the Qualified Nonelective Contributions or Qualified Matching Contributions are made. Notwithstanding the foregoing, Qualified Nonelective Contributions and Qualified Matching Contributions that are taken into account for purposes of applying the test contained in Section 2 of this Appendix C shall not be taken into account under this Section 5.

SECTION 6

If either (a) the Matching Contributions and, if taken into account under Section 5 of this Appendix C, the Deferral Amounts, Qualified Nonelective Contributions and/or Qualified Matching Contributions made on behalf of Highly Compensated Eligible Participants, or (b) the nondeductible employee contributions made by Highly Compensated Eligible Participants exceed the amount permitted under the "contribution percentage test" for any given Plan Year, then, before the close of the Plan Year following the Plan Year for which the Excess Aggregate Contributions were made, the amount of the Excess Aggregate Contributions attributable to the Plan for the Plan Year under either Section 6(a)(1) or (2), or both, as adjusted to reflect any income, gain or loss attributable to such contributions through the end of the Plan Year shall be distributed or, if the Excess Aggregate Contributions are forfeitable, forfeited. The income allocable to such contributions shall be determined in a similar manner as described in Section 4.2 of the Plan. As to any Highly Compensated Employee, any distribution or forfeiture of his allocable portion of the Excess Aggregate Contributions for a Plan Year shall first be attributed to any nondeductible employee contributions made by the Participant during the Plan Year for which no corresponding Plan Sponsor contribution is made and then to any remaining nondeductible employee contributions made by the Participant during the Plan Year and any Matching Contributions thereon. As between the Plan and any other plan or plans maintained by the Plan Sponsor in which Excess Aggregate Contributions for a Plan Year are held, each such plan shall distribute or forfeit a pro-rata share of each class of contribution based on the respective amounts of a class of contribution made to each plan during the Plan Year. The payment of the Excess Aggregate Contributions shall be made without regard to any other provision in the Plan.

For purposes of this Section 6, with respect to any Plan Year, "Excess Aggregate Contributions" means the excess of:

(a) the aggregate amount of the Matching Contributions and nondeductible employee contributions (and any Qualified Nonelective Contributions or Qualified

Matching Contributions) and, it taken into account under Section 5 of this Appendix C, the Deferral Amounts actually made on behalf of Highly Compensated Eligible Participants for the Plan Year, over

(b) the maximum amount of contributions permitted under the limitations of Section 5 of this Appendix C, determined by reducing contributions made on behalf of Highly Compensated Eligible Participants in order of their contribution percentages beginning with the highest of such percentages.

The determination of the amount of Excess Aggregate Contributions under this Section 6 shall be made after (1) first determining the excess Elective Deferrals under Section 3.1(b) of the Plan and (2) then determining the Excess Deferral Amounts under Section 3 of this Appendix C.

(c) Distribution or forfeiture of nondeductible employee contributions or Matching Contributions in the amount of the Excess Aggregate Contributions for any Plan Year shall be made with respect to Highly Compensated Eligible Participants on the basis of the dollar amount of the Excess Aggregate Contributions attributable to each Highly Compensated Eligible Participant. Forfeitures of Excess Aggregate Contributions may not be allocated to Participants whose contributions are reduced under this Section 6. The Plan Sponsor shall determine the amount of Excess Aggregate Contributions which shall be distributed to each Highly Compensated Eligible Participant (or forfeited, if forfeitable) as follows.

(1) The Matching Contributions and nondeductible contributions allocated to the Highly Compensated Eligible Participant with the highest dollar amount of such contributions for the Plan Year shall be reduced by the amount required to cause that Highly Compensated Eligible Participant's remaining Matching Contributions and nondeductible contributions for the Plan Year to be equal to the dollar amount of such contributions allocated to the Highly Compensated Eligible Participant with the next highest dollar amount of Matching contributions and nondeductible contributions for the Plan Year. This amount is then distributed to (or forfeited from the Account of, if forfeitable) the Highly Compensated Eligible Participant with the highest dollar amount of Matching Contributions and nondeductible contributions, unless a smaller reduction, when added to the total dollar amount already distributed (or forfeited, if forfeitable) pursuant to this Paragraph (1), equals the total Excess Aggregate Contributions.

(2) If the total amount distributed (or forfeited, if forfeitable) under Paragraph (1) is less than the total Excess Aggregate Contributions, the procedure in Paragraph (1) shall be repeated until the total dollar amount of Matching Contributions and nondeductible contributions distributed (or forfeited, if forfeitable) is equal to the total Excess Aggregate Contributions attributable to Highly Compensated Eligible Participants.

If a distribution of the total Excess Aggregate Contributions is made in accordance with Paragraphs (1) and (2) of this Section 6(c), the limitations in Section 5 of this Appendix C shall be treated as being met regardless of whether the actual contribution percentage, if recalculated after such distributions, would have satisfied the requirements of Section 5.

SECTION 7

Except to the extent limited by rules promulgated by the Secretary of the Treasury, if a Highly Compensated Eligible Participant is a participant in any other plan of the Plan Sponsor or any Affiliate which includes Matching Contributions, deferrals under a cash or deferred arrangement pursuant to Code Section 401(k), or nondeductible employee contributions, any contributions made by or on behalf of the Participant to the other plan shall be allocated with the same class of contributions under the Plan for purposes of determining the “actual deferral percentage” and “contribution percentage” under the Plan.

Except to the extent limited by rules promulgated by the Secretary of the Treasury, if the Plan and any other plans which include Matching Contributions, deferrals under a cash or deferred arrangement pursuant to Code Section 401(k), or nondeductible employee contributions are considered as one plan for purposes of Code Section 401(a)(4) and 410(b)(1), any contributions under the other plans shall be allocated with the same class of contributions under the Plan for purposes of determining the “contribution percentage” and “actual deferral percentage” under the Plan.

APPENDIX D

FROZEN BENEFIT DISTRIBUTION RULES

**SECTION 1
DEFINITIONS**

For purposes of this Appendix D, the following terms shall have the following meanings:

- (a) “Annuity Starting Date” means the date on which a distribution is deemed to commence for purposes of calculating the benefit to be distributed.
- (b) “Qualified Joint and Survivor Annuity” means an annuity for the life of the Participant with a survivor annuity for the life of his/her spouse which is one-half of the amount of the annuity payable during the joint lives of the Participant and his/her spouse and which is the actuarial equivalent of a single life annuity for the life of the Participant.
- (c) “Preretirement Survivor Annuity” means an annuity for the life of the surviving spouse of a deceased Participant that has an actuarial present value that is equal to 100% of the balance in the Participant’s account as of the date of the Participant’s death.
- (d) “Qualified Optional Survivor Annuity” means an annuity for the life of the Participant with a survivor annuity for the life of his/her spouse which is three-quarters of the amount of the annuity payable during the joint lives of the Participant and his/her spouse and which is the actuarial equivalent of a single life annuity for the life of the Participant.

For purposes of this Appendix D, the following election rules shall apply:

The Plan Administrator shall furnish to the Participant a written explanation of:

- (a) the terms and conditions of a Qualified Joint and Survivor Annuity, a Qualified Optional Survivor Annuity and a Qualified Preretirement Survivor Annuity;
- (b) the Participant’s right to make, and the effect of, an election not to receive the Qualified Joint and Survivor Annuity or the Qualified Preretirement Survivor Annuity;
- (c) the rights of the Participant’s spouse as described below; and
- (d) the right to make and the effect of such an election.

In the case of a Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity, the written explanation shall be provided to the Participant no less than thirty (30) days and no more than ninety (90) days prior to the first date on which he is entitled to commencement of payments from the Fund. Notwithstanding the foregoing, a

Participant may elect to waive the requirement that the written explanation be provided at least thirty (30) days prior to commencement of payments, provided that the first payment from the Fund occurs more than seven (7) days from the date the explanation is received by the Participant. In the case of the Qualified Preretirement Survivor Annuity, the written explanation shall be provided to the Participant in whichever of the following periods ends last:

- (i) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35;
- (ii) the period beginning one year before and ending one year after the Employee first becomes a Participant;
- (iii) the period beginning one year before and ending one year after these rules apply to the Participant; or
- (iv) a reasonable period of time after separation from service in the case of a Participant who separates from service before attaining age 35.

The Participant may elect during the “applicable election period” not to receive his benefit in the form of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity by execution and delivery to the Plan Administrator of a form that purpose by the Plan Administrator. The term “applicable election period” shall mean, with respect to a Qualified Joint and Survivor Annuity, the 90-day period ending on the first date on which the Participant is entitled to commencement of payment from the Fund. In the event the Participant waives the minimum thirty (30) day requirement for the written explanation, the “applicable election period” shall not end before the period ending thirty (30)-days after the Participant receives the written explanation. Notwithstanding the foregoing, if the Participant receives the written explanation of the Qualified Joint and Survivor Annuity and affirmatively elects a form of distribution, the payments from the Fund may commence less than thirty (30) days after the Participant receives the written explanation provided that the Participant may revoke the affirmative distribution election until the later of the time payments from the Fund are to begin or the expiration of the seven (7) day period which begins on the day after the Participant receives the written explanation. With respect to a Qualified Preretirement Survivor Annuity, the “applicable election period” shall mean the period which begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant’s death.

In the case of a married Participant, no election (other than an election to receive payment in the form of a Qualified Optional Survivor Annuity in lieu of a Qualified Joint and Survivor Annuity) shall be effective unless:

- (A) the spouse of the Participant consents in writing to the election and the consent acknowledges the effect of the election (including, if applicable, the

identity of any Beneficiary other than the Participant's spouse and the alternate form of payment) and is witnessed by a notary public, or

(B) it is established to the satisfaction of the Plan Administrator that the consent required pursuant to subparagraph (A) above may not be obtained because there is no spouse, the spouse cannot be located, the Participant has a court order indicating that he is legally separated or has been abandoned (within the meaning of local law) unless a qualified domestic relations order provides otherwise, or of any other circumstances as permitted by regulations promulgated by the Department of the Treasury. If the spouse is legally incompetent to give consent, consent by the spouse's legal guardian shall be deemed to be consent by the spouse.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to that spouse. If an election is made, the Participant's Account may be paid in any alternate form of payment permitted by the Plan. Any waiver of a Qualified Preretirement Survivor Annuity made prior to the first day of the Plan Year in which the Participant attains age 35 shall become invalid as of the first day of the Plan Year in which the Participant attains age 35 and a Qualified Preretirement Annuity shall be provided, unless a new waiver is obtained. The Participant may revoke any election not to receive payment in the form of a Qualified Joint and Survivor Annuity at any time prior to commencement of payments from the Fund, and may make a new election at any time prior to the commencement of payments from the Fund

If a Participant is married and has in effect an annuity form of payment for the payment of his Account and the Participant wishes to obtain a loan from the Plan in accordance with Plan Section 5, the Participant's spouse must, within the ninety (90) day period preceding the date the loan is made, consent to the loan and the possibility of a reduction in the Participant's Account resulting in its nonpayment.

SECTION 2 **HUDSON PLAN**

Except as may be required or permitted by Plan Sections 7 through 10, effective April 1, 1998, all distributions made to a Participant or his beneficiaries attributable to amounts transferred to this Plan from the Prior Retirement Account under the Hudson Foods, Inc. 401(k) Retirement Plan (the "Hudson Plan") shall be made by the Trustee in one of the following methods:

(a) Qualified Joint and Survivor Annuity or Life Annuity. A Participant who is married and begins to receive payments under the Plan shall receive payments in the form of a Qualified Joint and Survivor Annuity, unless the Participant, with the consent of his spouse, has properly elected otherwise. An unmarried Participant shall receive his benefits in the form of a single life annuity, unless the Participant elects properly otherwise.

(b) Preretirement Survivor Annuity. If a Participant who is married dies before the date upon which benefit payments are to commence, the Participant's surviving spouse shall receive payments, commencing immediately, in the form of a Preretirement Survivor Annuity, unless the Participant, with the consent of his spouse has properly elected otherwise.

(c) Optional Forms. In the event a Participant elects not to receive benefits in the form described in Subsection (a) above, the distribution of benefits may be made by the Trustee in one of the methods elected by the Participant described below:

- (i) single life annuity, a single life annuity with a five- or ten-year certain term,
- (ii) an actuarially equivalent life annuity with a survivor annuity payable to the Participant's spouse equal to 100%, 66 and 2/3% or 50% of the payments made to the Participant during his life, or
- (iii) a Qualified Optional Survivor Annuity.

APPENDIX E
MINIMUM DISTRIBUTION REQUIREMENTS

SECTION 1
GENERAL RULES

- (a) Effective Date and Precedence . The provisions of this Appendix E will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this Appendix E will take precedence over any inconsistent provisions of the Plan.
- (b) Requirements of Treasury Regulations Incorporated . All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).
- (c) TEFRA Section 242(b)(2) Elections . Notwithstanding the other provisions of this Appendix E, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

SECTION 2
TIME AND MANNER OF DISTRIBUTION

- (a) Required Beginning Date . The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (b) Death of Participant Before Distributions Begin . If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 2(b), other than Section 2(b)(1) of this Appendix E, will apply as if the surviving spouse were the Participant.

For purposes of this Section 2(b) and Section 4 of this Appendix E, unless Section 2(b)(4) of this Appendix E applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 2(b) of this Appendix E applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 2(b)(1) of this Appendix E. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 2(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions will be made in accordance with Sections 3 and 4 of this Appendix E. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the regulations issued thereunder.

SECTION 3
REQUIRED MINIMUM DISTRIBUTIONS
DURING PARTICIPANT'S LIFETIME

(a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(1) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year;

(2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 3

beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

SECTION 4
REQUIRED MINIMUM DISTRIBUTIONS AFTER PARTICIPANT'S DEATH

(a) Death On or After Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the

Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 4(a).

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 2(b)(1) of this Appendix E, this Section (b) will apply as if the surviving spouse were the Participant.

SECTION 5 **DEFINITIONS**

As used in this Appendix E, the following words and phrases shall have the meaning set forth below:

(a) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 1.6 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-4, Q&A-1, of the Treasury Regulations.

(b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 2(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.

(c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

(d) Participant's Account Balance. The Account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year ("Valuation Calendar Year") increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the Valuation Calendar Year after the Valuation

Date and decreased by distributions made in the Valuation Calendar Year after the Valuation Date. The Account balance for the Valuation Calendar Year includes any amounts rolled over or transferred to the Plan either in the Valuation Calendar Year or in the Distribution Calendar Year if distributed or transferred in the Valuation Calendar Year.

(e) Required Beginning Date . Required Beginning Date means April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70½ or the calendar year in which the Participant retires, except that in the case of a person described in Section 1(b)(2) of Appendix B the Required Beginning Date shall be April 1 of the calendar year following the calendar year in which the Participant attains age 70½.

Computation of Ratio of Earnings to Fixed Charges

(dollars in millions)

	Fiscal Years				
	2008	2007	2006	2005	2004
Earnings:					
Income (loss) from continuing operations					
before income taxes	\$154	\$410	\$(268)	\$441	\$456
Add: Fixed charges	272	278	325	277	315
Add: Amortization of capitalized interest	4	3	3	2	2
Less: Capitalized interest	(3)	(2)	(8)	(6)	(3)
Total adjusted earnings	427	689	52	714	770
Fixed Charges:					
Interest	212	228	263	226	269
Capitalized interest	3	2	8	6	3
Amortization of debt discount expense	3	4	5	6	6
Rentals at computed interest factor (1)	54	44	49	39	37
Total fixed charges	\$272	\$278	\$325	\$277	\$315
Ratio of Earnings to Fixed Charges	1.57	2.48	-	2.58	2.44
Insufficient Coverage	\$ -	\$ -	\$273	\$ -	\$ -

(1) Amounts represent those portions of rent expense (one-third) that are reasonable approximations of interest costs.

Tyson Foods, Inc.
Exhibit 21 – Subsidiaries of the Company

Entity Name	Place of Incorporation
<i>Tyson Foods, Inc.</i> <i>Subsidiaries 100% owned unless otherwise noted</i>	<i>Delaware (1986)</i>
Global Employment Services, Inc.	Delaware (1993)
National Comp Care, Inc.	Delaware (1995)
Oaklawn Capital Corporation	Delaware (1995)
Oaklawn Capital - Mississippi LLC	Mississippi (1996)
Provemex International Holdings, Inc.	Delaware (2005)
The Pork Group, Inc.	Delaware (1998)
TyNet Corporation	Delaware (1995)
Tyson Breeders, Inc.	Delaware (1971)
Tyson Farms, Inc.	North Carolina (1968)
Tyson International Company, Ltd.	Bermuda (1993)
Tyson Mexican Original, Inc.	Delaware (1998)
Tyson Poultry, Inc.	Delaware (1998)
Tyson Receivables Corporation	Delaware (2001)
Tyson Sales and Distribution, Inc.	Delaware (1998)
Tyson Shared Services, Inc.	Delaware (1998)
Tyson China Holding Limited	Hong Kong (2008)
<i>Tyson Chicken, Inc. (Subsidiary of Tyson Foods, Inc.)</i>	<i>Delaware (1997)</i>
Hudson Midwest Foods, Inc.	Nebraska (1996)
<i>Tyson International Holding Company (Subsidiary of Tyson Foods, Inc.)</i>	<i>Delaware (1994)</i>
Oaklawn Sales Ltd.	British Virgin Islands (1995)
Tyson India Holdings, Ltd.	Republic of Mauritius (2008)
<i>Tyson Fresh Meats, Inc. (formerly known as IBP, Inc.)</i>	<i>Delaware (2000)</i>
Tyson Processing Services, Inc.	Delaware (1997)
The IBP Foods Co.	Delaware (1999)
Tyson Hog Markets, Inc.	Delaware (1972)
IBP Caribbean, Inc.	Cayman Islands (1997)
IBP Redevelopment Corporation	Missouri (2000)
Tyson Service Center Corp.	Delaware (1979)
Tyson of Wisconsin, Inc.	Delaware (1989)
Madison Foods, Inc.	Delaware (1998)
PBX, Inc.	Delaware (1974)
Rural Energy Systems, Inc.	Delaware (1984)
Texas Transfer, Inc.	Texas (1987)
Tyson Canada Finance LP	New Brunswick, Canada (2003)

New Canada Holdings, Inc.
IBP Finance Company of Canada
Lakeside Farm Industries, Ltd.

Lakeside Feeders, ULC
Provemex Holdings, LLC
Lakeside Feeders Partnership

961436 Alberta ULC
1385606 Alberta ULC
Cobb Breeders B.V.

Cobb Europe Limited
(formerly known as Cobb Breeding Company Ltd.) (Subsidiary of Lakeside Feeders, ULC)
Cobb Poland B.V.
Cobb-Istanbul Ana Damizlik Isletmeleri Ve Ticaret A.S.
Cobb France Eurl
Kabir International S.R.L.

Tyson International Service Center, Inc. (Subsidiary of Tyson Fresh Meats, Inc.)
Tyson International Service Center, Inc. Asia
Tyson International Service Center, Inc. Europe

IBP Foodservice, LLC
*(78% owned by Tyson Fresh Meats, Inc.
22% owned by IBP Caribbean, Inc.)*

Foodbrands America, Inc.
(Subsidiary of IBP Foodservice, LLC)
The Bruss Company
CBFA Management Corp.
Foodbrands Supply Chain Services, Inc.
Wilton Foods, Inc.
Zemco Industries, Inc.

Tyson Deli, Inc.
*(formerly known as Tyson Retail Deli, Inc.)
(Subsidiary of Foodbrands America, Inc.)*
Tyson Prepared Foods, Inc.

Delaware (2007)
Nova Scotia (1997)
Alberta, Canada (1994)

Alberta, Canada (1993)
Delaware (2005)
Alberta, Canada (2001)

Alberta, Canada (2001)
Alberta Canada (2008)
The Netherlands (1994)

United Kingdom (1974)
Poland (1996)
Turkey (2001)
France (1990)
Italy (2004)

Delaware (1973)
Delaware (1985)
Delaware (1985)

Delaware (1997)

Delaware (1994)

Illinois (1956)
Delaware (1998)
Delaware (1992)
New York (1964)
Delaware (1999)

Delaware (2003)

Delaware (2003)

Tyson Refrigerated Processed Meats, Inc.
(Subsidiary of Foodbrands America, Inc.)
Carolina Brand Foods, LLC

Delaware (2003)

North Carolina (2000)

DFG Foods, Inc.
(Subsidiary of Foodbrands America, Inc.)
DFG Foods, LLC

Delaware (1998)

Oklahoma (1998)

JOINT VENTURES/PARTNERSHIPS

Cactus Argentina S.A.	Argentina (1998)
Exportaciones Agroindustriales, S.A.	Argentina (1994)
Carneco Foods, LLC	Oklahoma (2000)
Central Industries, Inc.	Mississippi (1964)
Dynamic Fuels, LLC	Delaware (2007)
Godrej Foods Limited	India (2008)
Haimen Tyson Poultry Development Co., Ltd.	China (2008)
Jiangsu Tyson Foods Co., Ltd.	China (2008)
Mainstream Holding Limited	Hong Kong (1997)
Shanghai Shineway DCH Tyson Co. Ltd.	China (1997)
Nacrail, LLC	Delaware (2001)
Shandong Sand's Food and Development Co. Ltd.	China (Inactive) (1995)
Shandong Tyson-Da Long Food Company, Ltd.	China (2001)

TYSON DE MEXICO S. DE R.L. DE C.V.

Tyson de Mexico, S. de R.L. de C.V.	Mexico (1984)
Avicultores Tecnicos, S. de R.L. de C.V.	Mexico (1985)
Comercializadora Avemex, S. de R.L. de C.V.	Mexico (1992)
Corporativo Orvin S. de R.L. de C.V.	Mexico (1989)
Empresas Provemex S. de R.L. de C.V.	Mexico (1972)
Laboral Gomez Palantina, S. de R.L. de C.V.	Mexico (1988)
Provemex Avicola, S. de R.L. de C.V.	Mexico (1974)

Cobb Vantress, Inc.***Cobb-Vantress, Inc.******(Subsidiary of Tyson Foods, Inc.)***

Cobb Caribe S.A.

Cobb Espanola S.A.

Cobb-Russia LLC

Gen Ave S.A.

Matsusaka Farm Company Limited

Progenitores Avicolas, C.A.

Venco Research and Breeding Farm, Ltd.

Reproductores Cobb S.A.

Cobb-Vantress Philippines, Inc.

C.V. Holdings, Inc.

Hybro B.V.

Hybro Genetics Brasil Ltda.

Avex S.A.

Forune G-P Farms

Celestra Investments Limited***(Subsidiary of Cobb-Vantress, Inc.)***

Tyson International Holdings, SARL

Tyson Delaware Holdings, LLC

Tyson International Holdings, S.C.A.

Cobb Europe B.V.

Cobb-Vantress Brasil Ltda

Tyson Do Brasil Participacoes Ltda

(formerly known as Tyson PB Participacoes Ltda.)

Tyson Brasil Investimentos I Ltda

Tyson Brasil Investimentos II Ltda

Tyson Brasil Investimentos III Ltda

Delaware (1986)

Dominican Republic (2001)

Spain (1969)

Delaware (2006)

Argentina (1982)

Japan (1967)

Venezuela (1967)

India (1980)

Argentina (1999)

Philippines (2003)

Philippines (2003)

The Netherlands (1959)

Brazil (2005)

Peru (2006)

Sri Lanka (2004)

Gibraltar (2002)

Luxembourg (2003)

Delaware (2003)

Luxembourg (2003)

The Netherlands (1994)

Brazil (1997)

Brazil (2007)

Brazil (2008)

Brazil (2008)

Brazil (2008)

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 333-115378; 333-115379; 333-115380; 333-70646; 333-22883; 333-02135 and 333-22881) pertaining to certain employee benefit plans of Tyson Foods, Inc., and the Registration Statements (Form S-3 No. 333-53171 and Form S-3 ASR No. 333-132434) of Tyson Foods, Inc. and related Prospectuses of our reports dated November 17, 2008, with respect to the consolidated financial statements and schedule of Tyson Foods, Inc., and the effectiveness of internal control over financial reporting of Tyson Foods, Inc., included in this Annual Report (Form 10-K) for the year ended September 27, 2008.

Rogers, Arkansas
November 17, 2008

CERTIFICATIONS

I, Richard L. Bond, certify that:

1. I have reviewed this annual report on Form 10-K of Tyson Foods, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 20, 2008

/s/ Richard L. Bond

Richard L. Bond

President and Chief Executive Officer

CERTIFICATIONS

I, Dennis Leatherby, certify that:

1. I have reviewed this annual report on Form 10-K of Tyson Foods, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 20, 2008

/s/ Dennis Leatherby

Dennis Leatherby

Executive Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Annual Report of Tyson Foods, Inc. (the "Company") on Form 10-K for the fiscal year ending September 27, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard L. Bond, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Richard L. Bond

Richard L. Bond
President and Chief Executive Officer

November 20, 2008

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Annual Report of Tyson Foods, Inc. (the "Company") on Form 10-K for the fiscal year ending September 27, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Dennis Leatherby, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Dennis Leatherby

Dennis Leatherby
Executive Vice President and Chief Financial Officer

November 20, 2008