

TYSON FOODS INC

FORM 8-K (Current report filing)

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of Earliest Event Reported): November 16, 2006

Tyson Foods, Inc.

(Exact name of Registrant as specified in its charter)

Delaware

(State of incorporation or organization)

001-14704

(Commission File Number)

71-0225165

(IRS Employer Identification No.)

2210 West Oaklawn Drive, Springdale, AR 72762-6999

(479) 290-4000

(Address, including zip code, and telephone number, including area code, of
Registrant's principal executive offices)

Not applicable

(Former name, former address and former fiscal year, if applicable)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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ITEM 5.02 – DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS

Tyson Foods, Inc. (the “Company”) presently maintains the Tyson Foods, Inc. Annual Incentive Compensation Plan for Senior Executive Officers (the “Executive Incentive Plan”), which was approved by the Company’s shareholders during fiscal 2005. The Executive Incentive Plan provides for cash bonus eligibility for members of the Company’s senior management team designated by the Compensation Committee of the Company’s Board of Directors (the “Compensation Committee”) based on performance measures established by the Compensation Committee.

On November 16, 2006, the Compensation Committee designated the eligible participants and determined that achievement of a threshold Adjusted EBIT (earnings before interest and taxes after adjustment for extraordinary items) amount would be the performance measure under the Executive Incentive Plan for fiscal year 2007. Richard L. Bond, President and Chief Executive Officer; and Greg Lee, Chief Administrative Officer and President, International, were designated as eligible participants under the Executive Incentive Plan. The individual annual incentive bonuses for which Messrs. Bond and Lee are eligible will be determined by (1) taking the amount by which Adjusted EBIT exceeds \$570,000,000 up to \$1,036,000,000 multiplied by the percentage set forth in column (a) below by each participant’s name and (2) adding to that product, if applicable, the amount by which Adjusted EBIT exceeds \$1,036,000,000 multiplied by the percentage set forth in column (b) below by each participant’s name:

<u>Participant</u>	<u>Column (a)</u>	<u>Column (b)</u>
Richard L. Bond	1.60%	0.75%
Greg W. Lee	0.40%	0.125%

However, in no event will either Messrs. Bond or Lee be eligible to receive an annual incentive bonus payment in excess of \$10,000,000.

Also on November 16, 2006, the Compensation Committee adopted the Cost Management Incentive Plan (the “CMI Plan”), pursuant to which members of the Company’s management team, including the Company’s principal executive officer, principal financial officer and other named executive officers, may receive a one time cash bonus. Under the CMI Plan, amounts will be added to the Company’s bonus pools for officers and management if the cost savings goals for fiscal year 2007, as described in the following schedule, are met:

<u>Cost Savings Achieved</u>	<u>Amount Added to Bonus Pools</u>
\$170,000,000 or less	\$0
\$170,000,001 to \$180,000,000	\$5,000,000
\$180,000,001 to \$190,000,000	\$7,500,000
\$190,000,001 to \$200,000,000	\$10,000,000
\$200,000,001 to \$210,000,000	\$12,500,000
\$210,000,001 and above	\$15,000,000

No bonuses will be paid pursuant to the CMI Plan if actual cost savings for fiscal year 2007 are less than \$170 million. The Company’s accounting group will compile the fiscal year 2007 results and provide quarterly updates to management. Senior management will review overall results by groups and may use discretion in allocating CMI Plan bonus pool dollars based on such results. Bonuses received under the CMI Plan will be allocated in a manner similar to the allocations made by the Company under its standard EBIT based bonus program and the Executive Incentive Plan; however, the bonuses under the CMI Plan will be independent of cash bonuses payable to members of management under the standard EBIT bonus program and to senior executive

officers under the Executive Incentive Plan.

Also on November 16, 2006, the Compensation Committee approved a separate grant of 500,000 non-qualified performance-based stock options (the "Options") under the Tyson Foods, Inc. 2000 Stock Incentive Plan to Mr. Bond. The terms and conditions of the Options are set forth in the Nonqualified Stock Option Award agreement (the "Grant Agreement") dated November 17, 2006 (the "Grant Date").

Under the terms of the Grant Agreement, the Options will expire upon the earlier of: (i) the tenth anniversary of the Grant Date; (ii) three months following the date Mr. Bond ceases to be an employee of the Company for any reason other than death, disability, or retirement after attaining at least age 62; or (iii) one year following the date the Options vest if Mr. Bond ceases to be an employee of the Company due to death, disability, or retirement after attaining at least age 62.

The Options will vest on December 31, 2009 if earnings per share, based on the operating earnings of the Company for the 2009 fiscal year, are at least \$1.34 and Mr. Bond remains continuously employed by the Company through December 31, 2009, or his employment terminates prior to that date because of death, disability, or retirement after attaining at least age 62. Notwithstanding the foregoing, the Options will also vest upon a termination of employment by the Company other than for cause, upon a termination of employment by Mr. Bond for "good reason" (as defined in Mr. Bond's employment agreement), or upon a change of control of the Company.

The foregoing description of the Options and the Grant Agreement does not purport to be complete and is qualified in its entirety by reference to the Grant Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

ITEM 9.01 – FINANCIAL STATEMENTS AND EXHIBITS

(c) Exhibits

10.1 Nonqualified Stock Option Award Pursuant to the Tyson Foods, Inc. 2000 Stock Incentive Plan

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Tyson Foods, Inc.

Date: November 22, 2006

By: /s/ R. Read Hudson
Name: R. Read Hudson
Title: Vice President, Associate General Counsel and Secretary

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
10.1	Nonqualified Stock Option Award Pursuant to the Tyson Foods, Inc. 2000 Stock Incentive Plan

**NONQUALIFIED STOCK OPTION AWARD
PURSUANT TO THE TYSON FOODS, INC. 2000 STOCK INCENTIVE PLAN**

THIS AWARD (the "Award") is made on the Grant Date set forth below by Tyson Foods, Inc., a Delaware corporation (the "Company"), to Richard L. Bond (the "Optionee") SSN _____.

Upon and subject to the Terms and Conditions applicable hereto and incorporated herein by reference, the Company hereby awards to Optionee a nonqualified stock option (the "Option"), as described below, to purchase the Option Shares.

- A. Grant Date: **November 17, 2006.**
- B. Type of Option: Nonqualified Stock Option.
- C. Plan under which Option is granted: Tyson Foods, Inc. 2000 Stock Incentive Plan ("Plan").
- D. Option Shares: 500,000 shares of the Company's \$.10 par value Class A common stock (the "Common Stock"), subject to adjustment as provided in the Terms and Conditions.
- E. Exercise Price: **\$15.37** per share, subject to adjustment as provided in the Terms and Conditions.
- F. Option Period: Only after the Option has vested pursuant to paragraph G below, the Option may be exercised during the Option Period. The Option Period commences on the Grant Date and ends, subject to earlier termination as provided in the Terms and Conditions, on the earliest of the following:
 (i) the tenth (10th) anniversary of the Grant Date;
 (ii) three months following the date the Optionee ceases to be an employee of the Company or any Affiliate for any reason other than death, Disability, or retirement after attaining at least age 62; or
 (iii) one (1) year following the date the Option Shares vest if the Optionee ceases to be an employee of the Company or any Affiliate due to death, Disability, or retirement after attaining at least age 62.
 Provided, however, that the Option may only be exercised as to the vested Option Shares determined pursuant to the Vesting Schedule below. *Note that other restrictions to exercising the Option, as described in the Terms and Conditions, may apply .*
- G. Vesting Schedule: The Option Shares shall become vested Option Shares on December 31, 2009 if the following two conditions are met:
 (i) The Company's 2009 fiscal year earnings per share, based on the operating earnings, are at least \$1.34. To determine operating earnings per share, the Company will take the reported GAAP earnings per share ("Reported EPS") and will adjust the Reported EPS for the same items used to calculate fiscal year 2009 adjusted EBIT for annual bonus determination. To make such adjustments, the Company will use a 36% effective tax rate and the same number of shares used to calculate Reported EPS. If the capitalization structure of the Company changes (increase or decrease in the number of issued shares of Common Stock) between the Grant Date and the date Reported EPS is calculated for the 2009 fiscal year, the Company will make a Reported EPS calculation for purposes of this Award that is based on the same number of shares of Common Stock used in calculating earnings per share for the first quarter of the Company's 2007 fiscal year. Such earnings per share calculation will then be adjusted in the manner described above and used to determine if the 2009 fiscal year operating earnings per share are at least \$1.34; and
 (ii) The Optionee remains continuously employed by the Company or any Affiliate through December 31, 2009, or the Optionee's employment terminates prior to the date because of the Optionee's death, Disability, or retirement after attaining at least age 62.

Notwithstanding the foregoing, the following additional vesting rules shall apply:

- (a) Upon a Change of Control (defined in Section 5(b) of the Terms and Conditions) during the Option Period, all unvested Option Shares granted under this Award shall become vested Option Shares sixty (60) days after the Change of Control.
- (b) Upon a termination of employment prior to December 31, 2009 by the Company at the Company's election other than for Cause or by Optionee for Good Reason, all unvested Option Shares granted under this Award shall become vested Option Shares.
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IN WITNESS WHEREOF, the Company has executed and sealed this Award as of the Grant Date set forth above.

TYSON FOODS, INC.:

By:

Title:

**TERMS AND CONDITIONS TO THE
NONQUALIFIED STOCK OPTION AWARD
PURSUANT TO THE
TYSON FOODS, INC. 2000 STOCK INCENTIVE PLAN**

1. Exercise of Option. Subject to the provisions of the Plan and the Award, which is made pursuant to the Plan, and subject also to these Terms and Conditions, which are incorporated in and made a part of the attached Award:

(a) The Option may be exercised with respect to all or any portion of the vested Option Shares at any time during the Option Period by the delivery to the Company, at its principal place of business, of (i) a notice of exercise in substantially the form required by the Committee (as defined in the Plan) (a form of which is available from the Company), which shall be actually delivered to the Company before the Optionee desires to exercise all or any portion of the Option; and (ii) payment to the Company of the Exercise Price *multiplied* by the number of shares being purchased (the "Purchase Price") in the manner provided in Subsection (b).

(b) The Purchase Price shall be paid in full upon the exercise of an Option and no Option Shares shall be issued or delivered until full payment therefor has been made. Payment of the Purchase Price for all Option Shares purchased pursuant to the exercise of an Option shall be made in cash, certified check, or, alternatively, as follows:

(i) by delivery to the Company of a number of shares of Common Stock which have been owned by the Optionee for at least six (6) months prior to the date of the Option's exercise, having a Fair Market Value, as determined under the Plan, on the date of exercise either equal to the Purchase Price or in combination with cash to equal the Purchase Price;

(ii) subject to applicable securities laws, by receipt of the Purchase Price in cash from a broker, dealer or other "creditor" as defined by Regulation T issued by the Board of Governors of the Federal Reserve System following delivery by the Optionee to the Committee of instructions in a form acceptable to the Committee regarding delivery to such broker, dealer or other creditor of that number of Option Shares with respect to which the Option is exercised; or

(iii) by any combination of the foregoing.

Upon acceptance of such notice and receipt of payment in full of the Purchase Price and any tax withholding liability, the Company shall cause to be issued a certificate representing the Option Shares purchased.

2. Withholding. The Optionee must satisfy federal, state and local, if any, withholding taxes imposed by reason of the exercise of the Option either by paying to the Company the full amount of the withholding obligation (i) in cash; (ii) by tendering shares of Common Stock which have been owned by the Optionee for at least six (6) months prior to the date of exercise having a Fair Market Value equal to the tax withholding obligation; (iii) by electing, irrevocably and in substantially the form required by the Committee (the "Withholding Election"), to have the smallest number of whole shares of Common Stock which, when multiplied by the Fair Market Value of the Common Stock as of the date the Option is exercised, is sufficient to satisfy the minimum required amount of tax withholding

obligations; or (iv) by any combination of the above. Optionee may make a Withholding Election only if the following conditions are met:

(a) the Withholding Election is 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 in substantially the form required by the Committee (a form of which is available from the Company); and

(b) any Withholding Election will be irrevocable; however, the Committee may, in its sole discretion, disapprove and give no effect to the Withholding Election.

3. Rights as Shareholder. Until the stock certificates reflecting the Option Shares accruing to the Optionee upon exercise of the Option are issued to the Optionee, the Optionee shall have no rights as a shareholder with respect to such Option Shares. The Company shall make no adjustment for any dividends or distributions or other rights on or with respect to Option Shares for which the record date is prior to the issuance of that stock certificate, except as the Plan or this Award otherwise provides.

4. Restriction on Transfer of Option. Except as otherwise expressly permitted by the Committee in writing, the Option evidenced hereby is nontransferable other than by will or the laws of descent and distribution, and, shall be exercisable during the lifetime of the Optionee only by the Optionee (or in the event of his disability, by his legal representative) and after his death, only by the legal representative of the Optionee's estate.

5. Changes in Capitalization.

(a) The number of Option Shares and the Exercise Price shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a subdivision or combination of shares or the payment of a stock dividend (in excess of two percent (2%)) in shares of Common Stock to holders of outstanding shares of Common Stock or any other increase or decrease in the number of shares of Common Stock outstanding effected without receipt of consideration by the Company.

(b) If the Company shall be the surviving corporation in any merger, consolidation, reorganization or other change in the corporate structure of the Company or the Common Stock or in the event of an extraordinary dividend (including a spin-off), the Optionee shall be entitled to purchase or receive the number and class of securities to which a holder of the number of shares of Common Stock subject to the Option at the time of such transaction would have been entitled to receive as a result of such transaction, and a corresponding adjustment shall be made in the Exercise Price. Upon the occurrence of a Change in Control (defined below) all of the unvested Options granted hereunder will vest sixty (60) days after the Change in Control event occurs (unless vesting earlier pursuant to the terms of the award agreement). If the Optionee is terminated by the Company other than for egregious circumstances during such sixty (60) day period, all of the unvested Options granted hereunder will vest on the date of termination. For purposes of this Agreement, the term "Change in Control" shall have the same meaning as the term "Change in Control" as set forth in the Plan; provided, however, that a Change in Control shall not include any event as a result of which (a) Don Tyson; (b) individuals related to Don Tyson by blood, marriage or adoption; and/or (c) any entities (including, but not limited to, a partnership, corporation,

trust or limited liability company) in which one or more individuals described in clauses (a) and (b) hereof possess over fifty percent (50%) of the voting power or beneficial interests of such entities continue to possess, immediately after such event, over fifty percent (50%) of the voting power in the Company or, if applicable, successor entity. The Committee shall have the sole discretion to interpret the foregoing provisions of this paragraph.

(c) In lieu of any adjustment or permitted exercises of the Option contemplated by Subsection (b) above, the Committee retains the discretion in the event of any transaction contemplated by Subsection (b) to cancel the vested Option in consideration for a payment to the Optionee equal to the positive difference between the then aggregate Fair Market Value of, and the aggregate Exercise Price for, those vested Option Shares which have not been exercised as of the effective date of such transaction. Such payment may be made in shares of Common Stock or in cash or in any combination thereof.

(d) The existence of the Plan and this Award shall 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 Common 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.

6. Special Limitations on Exercise. Any exercise of the Option 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 the Option upon any securities exchange or under any state or federal law is necessary or desirable as a condition of or in connection with the delivery of shares thereunder, the delivery of any or all shares pursuant to the Option may be withheld unless and until such listing, registration or qualification shall have been effected. The Optionee shall deliver to the Company, prior to the exercise of the Option, such information, representations and warranties as the Company may reasonably request in order for the Company to be able to satisfy itself that the Option Shares being acquired in accordance with the terms of an applicable exemption from the securities registration requirements of applicable federal and state securities laws.

7. Legend on Stock Certificates. The Company may endorse any legends on certificates evidencing Option Shares that it deems necessary and advisable or as may be required to reflect any restrictions provided for herein or otherwise required by applicable federal or state securities laws.

8. Governing Laws. This Award shall be construed, administered and enforced according to the laws of Delaware; provided, however, no option may be exercised except, in the reasonable judgment of the Board of Directors, in compliance with exemptions under applicable state securities laws of the state in which the Optionee resides, and/or any other applicable securities laws.

9. Successors. This Award shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and permitted assigns of the parties.

10. Notice. Except as otherwise specified herein, all notices and other communications under this Award shall be in writing and shall be deemed to have been given if personally delivered or if sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the proposed recipient at the last known address of the recipient. Any party may designate any other

address to which notices shall be sent by giving notice of the address to the other parties in the same manner as provided herein.

11. Severability. In the event that any one or more of the provisions or portion thereof contained in this Award shall for any reason be held to be invalid, illegal or unenforceable in any respect, the same shall not invalidate or otherwise affect any other provisions of this Award, and this Award shall be construed as if the invalid, illegal or unenforceable provision or portion thereof had never been contained herein.

12. Certain Breaches of Employment Agreement. Notwithstanding anything to the contrary herein, if, at any time, the Company determines that the Optionee has breached any of the terms, provisions and restrictions imposed upon the Optionee under any employment agreement between the Company and Optionee, or any provision thereof, then in effect (the "Employment Agreement"), all of the Option Shares shall be forfeited. Such forfeiture shall occur without limiting the Company's other rights and remedies available under the Employment Agreement.

13. Entire Agreement. Subject to the terms and conditions of the Plan, this Award expresses the entire understanding and agreement of the parties.

14. Violation. Any transfer, pledge, sale, assignment, or hypothecation of the Option or any portion thereof shall be a violation of the terms of this Award and shall be void and without effect.

15. Headings. Paragraph headings used herein are for convenience of reference only and shall not be considered in construing this Award.

16. Specific Performance. In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Award, the party or parties who are thereby aggrieved shall have the right to specific performance and injunction in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative.

17. No Right to Continued Employment. Neither the establishment of the Plan nor the award of Option Shares hereunder shall be construed as giving the Optionee the right to continued employment.

18. Defined Terms. Any capitalized terms herein not otherwise defined shall have the meanings set forth for such terms in the Plan.