

TYSON FOODS INC

FORM 10-Q (Quarterly Report)

Filed 05/10/04 for the Period Ending 03/27/04

| | |
|-------------|---|
| Address | 2200 DON TYSON PARKWAY SPRINGDALE, AR 72762-6999 |
| Telephone | 479-290-4000 |
| CIK | 0000100493 |
| Symbol | TSN |
| SIC Code | 2015 - Poultry Slaughtering and Processing |
| Industry | Food Processing |
| Sector | Consumer/Non-Cyclical |
| Fiscal Year | 09/30 |

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended March 27, 2004

OR

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

For the transition period from _____ to _____

0-3400
(Commission File Number)

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.)

2210 West Oaklawn Drive, Springdale, Arkansas
(Address of principal executive offices)

72762-6999
(Zip Code)

(479) 290-4000
(Registrant's telephone number, including area code)

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 (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by a check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act): Yes No .

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of December 27, 2003.

| <u>Class</u> | <u>Outstanding Shares</u> |
|--|---------------------------|
| Class A Common Stock, \$0.10 Par Value | 250,597,670 |
| Class B Common Stock, \$0.10 Par Value | 101,634,548 |

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

TYSON FOODS, INC.
CONSOLIDATED CONDENSED STATEMENTS OF INCOME
(In millions, except per share data)
(Unaudited)

| | Three Months Ended | | Six Months Ended | |
|---|--------------------|-------------------|-------------------|-------------------|
| | March 27, 2004 | March 29, 2003 | March 27, 2004 | March 29, 2003 |
| Sales | \$ 6,153 | \$ 5,845 | \$ 12,658 | \$ 11,647 |
| Cost of Sales | 5,668 | 5,465 | 11,779 | 10,867 |
| | 485 | 380 | 879 | 780 |
| Selling, General and Administrative | 208 | 197 | 416 | 405 |
| Other Charges | 14 | - | 39 | 47 |
| Operating Income | 263 | 183 | 424 | 328 |
| Other Expense: | | | | |
| Interest | 72 | 71 | 141 | 150 |
| Other | 3 | 1 | 6 | 6 |
| | 75 | 72 | 147 | 156 |
| Income before Income Taxes | 188 | 111 | 277 | 172 |
| Provision for Income Taxes | 69 | 39 | 101 | 61 |
| Net Income | \$ 119 | \$ 72 | \$ 176 | \$ 111 |
| Weighted Average Shares Outstanding: Outstanding: | | | | |
| Basic | 345 | 346 | 345 | 346 |
| Diluted | 356 | 352 | 356 | 353 |
| Earnings Per Share: | | | | |
| Basic | \$ 0.34 | \$ 0.21 | \$ 0.51 | \$ 0.32 |
| Diluted | \$ 0.33 | \$ 0.20 | \$ 0.49 | \$ 0.31 |
| Cash Dividends Per Share: | | | | |
| Class A | \$ 0.040 | \$ 0.040 | \$ 0.080 | \$ 0.080 |
| Class B | \$ 0.036 | \$ 0.036 | \$ 0.072 | \$ 0.072 |

See accompanying Notes to Consolidated Condensed Financial Statements.

TYSON FOODS, INC.
CONSOLIDATED CONDENSED BALANCE SHEETS
(In millions, except per share data)

| | (Unaudited) | |
|---|-------------------|-----------------------|
| | March 27, 2004 | September 27, 2003 |
| Assets | | |
| Current Assets: | | |
| Cash and cash equivalents | \$ 70 | \$ 25 |
| Accounts receivable, net | 1,158 | 1,280 |
| Inventories | 1,901 | 1,994 |
| Other current assets | 147 | 72 |
| Total Current Assets | 3,276 | 3,371 |
| Net Property, Plant and Equipment | 3,993 | 4,039 |
| Goodwill | 2,561 | 2,652 |
| Intangible Assets | 178 | 182 |
| Other Assets | 224 | 242 |
| Total Assets | <u>\$ 10,232</u> | <u>\$ 10,486</u> |
| Liabilities and Shareholders' Equity | | |
| Current Liabilities: | | |
| Current debt | \$ 399 | \$ 490 |
| Trade accounts payable | 792 | 838 |
| Other current liabilities | 1,056 | 1,147 |
| Total Current Liabilities | 2,247 | 2,475 |
| Long-Term Debt | 2,986 | 3,114 |
| Deferred Income Taxes | 677 | 722 |
| Other Liabilities | 178 | 221 |
| Shareholders' Equity: | | |
| Common stock (\$0.10 par value): | | |
| Class A-authorized 900 million shares: issued 267 million shares at March 27, 2004 and September 27, 2003 | 27 | 27 |
| Class B-authorized 900 million shares: issued 102 million shares at March 27, 2004 and September 27, 2003 | 10 | 10 |
| Capital in excess of par value | 1,858 | 1,861 |
| Retained earnings | 2,529 | 2,380 |
| Accumulated other comprehensive income/(loss) | 34 | (15) |
| | 4,458 | 4,263 |
| Less treasury stock, at cost- 17 million and 16 million shares at March 27, 2004 and September 27, 2003, respectively | 262 | 252 |
| Less unamortized deferred compensation | 52 | 57 |
| Total Shareholders' Equity | 4,144 | 3,954 |
| Total Liabilities and Shareholders' Equity | <u>\$ 10,232</u> | <u>\$ 10,486</u> |

See accompanying Notes to Consolidated Condensed Financial Statements.

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TYSON FOODS, INC.
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS
(In millions)
(Unaudited)

| | Three Months Ended | | Six Months Ended | |
|---------------------------------------|--------------------|-------------------|-------------------|-------------------|
| | March 27, 2004 | March 29, 2003 | March 27, 2004 | March 29, 2003 |
| Cash Flows From Operating Activities: | | | | |
| Net income | \$ 119 | \$ 72 | \$ 176 | \$ 111 |
| Depreciation and amortization | 119 | 112 | 238 | 228 |
| Plant closing-related charges | 7 | (23) | 29 | 22 |
| Deferred income taxes and other | 29 | 31 | (36) | - |
| Net changes in working capital | 10 | 53 | 138 | (71) |

| | | | | |
|--|--------------|--------------|--------------|--------------|
| Cash Provided by Operating Activities | 284 | 245 | 545 | 290 |
| Cash Flows From Investing Activities: | | | | |
| Additions to property, plant and equipment | (107) | (82) | (231) | (182) |
| Proceeds from sale of assets | 10 | 4 | 13 | 11 |
| Net changes in other assets and liabilities | (23) | 26 | (21) | 37 |
| Cash Used for Investing Activities | (120) | (52) | (239) | (134) |
| Cash Flows From Financing Activities: | | | | |
| Net change in debt | (105) | (167) | (219) | (81) |
| Purchases of treasury shares | (29) | (14) | (38) | (29) |
| Dividends | (14) | (14) | (27) | (27) |
| Stock options exercised and other | 16 | - | 22 | (2) |
| Cash Used for Financing Activities | (132) | (195) | (262) | (139) |
| Effect of Exchange Rate Change on Cash | (2) | (3) | 1 | 3 |
| Increase (Decrease) in Cash and Cash Equivalents | 30 | (5) | 45 | 20 |
| Cash and Cash Equivalents at Beginning of Period | 40 | 76 | 25 | 51 |
| Cash and Cash Equivalents at End of Period | <u>\$ 70</u> | <u>\$ 71</u> | <u>\$ 70</u> | <u>\$ 71</u> |

See accompanying Notes to Consolidated Condensed Financial Statements.

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TYSON FOODS, INC.
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Unaudited)

Note 1: ACCOUNTING POLICIES

BASIS OF PRESENTATION

The consolidated condensed financial statements have been prepared by Tyson Foods, Inc. (the Company), and are unaudited, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and accounting policies and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to such rules and regulations. Although the management of the Company believes that the disclosures contained herein are adequate to make the information presented not misleading, these consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company's annual report on Form 10-K/A for the fiscal year ended September 27, 2003. The preparation of consolidated condensed financial statements requires management 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.

Management believes the accompanying consolidated condensed financial statements contain all adjustments, including normal recurring accruals, adjustments related to plant closings as disclosed in note 2 and bovine spongiform encephalopathy (BSE) related charges as disclosed in note 3, necessary to present fairly the financial position as of March 27, 2004, and the results of operations and cash flows for the three and six months ended March 27, 2004 and March 29, 2003. The results of operations and cash flows for the three and six months ended March 27, 2004 and March 29, 2003 are not necessarily indicative of the results to be expected for the full year.

STOCK OPTIONS

On December 29, 2002, the Company adopted Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure" (SFAS 148). SFAS 148, which amended FASB Statement No. 123, "Accounting for Stock-Based Compensation," does not require use of the fair value method of accounting for stock-based employee compensation. The Company applies Accounting Principles Board Opinion No. 25 and related interpretations in accounting for its employee stock option plans. Accordingly, no compensation expense was recognized for its stock option plans. Had compensation expense for the employee stock option plans been determined based on the fair value method of accounting for the Company's stock option plans, the tax-effected impact would be as follows (in millions, except per share data):

| | Three Months Ended | | Six Months Ended | |
|---|--------------------|-------------------|-------------------|-------------------|
| | March 27, 2004 | March 29, 2003 | March 27, 2004 | March 29, 2003 |
| Net income as reported | \$ 119 | \$ 72 | \$ 176 | \$ 111 |
| Stock-based employee compensation expense included in net income, net of tax | 4 | 3 | 8 | 7 |
| Total stock-based employee compensation expense determined under fair value based method for all awards, net of tax | (6) | (4) | (11) | (9) |
| Pro forma net income | \$ 117 | \$ 71 | \$ 173 | \$ 109 |
| Earnings per share | | | | |
| As reported | | | | |
| Basic | \$ 0.34 | \$ 0.21 | \$ 0.51 | \$ 0.32 |
| Diluted | 0.33 | 0.20 | 0.49 | 0.31 |
| Pro forma | | | | |
| Basic | 0.34 | 0.20 | 0.50 | 0.31 |
| Diluted | \$ 0.33 | \$ 0.20 | \$ 0.49 | \$ 0.31 |

3931:

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In December 2003, the Financial Accounting Standards Board (FASB) revised Statement of Financial Accounting Standards No. 132, "Employers' Disclosures about Pensions and Other Postretirement Benefits" (SFAS No. 132). The revision of SFAS No. 132 requires expanded disclosures for defined benefit plans. The standard's revisions are effective for fiscal years ending after December 15, 2003, and for interim periods beginning after December 15, 2003. The Company's adoption of the revised SFAS No. 132 did not have a material impact on its financial position or results of operations.

In December 2003, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the Act) was signed. The Act allows a possible subsidy to retirement health plan sponsors to help offset the costs of participant prescription drug benefits. In January 2004, the FASB issued Staff Position No. 106-1, "Accounting and Disclosure Requirements Related to the Act" (the Position). The Position is effective for interim or annual periods ending after December 7, 2003. The Position allows plan sponsors to recognize or defer recognizing the effects of the Act in its financial statements. Specific accounting guidance for this federal subsidy is pending and, when issued, could require the Company to change previously reported information. The Company's accumulated postretirement benefit obligation and net periodic pension cost do not reflect the effects of this Act. The Company has elected to defer accounting for the Act and has estimated any future effect on its consolidated financial statements will not be material.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51" (the Interpretation). The Interpretation requires the consolidation of variable interest entities (VIE) in which an enterprise absorbs a majority of the entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity. Previously, entities were generally consolidated by an enterprise that had a controlling financial interest through ownership of a majority voting interest in the entity. In December 2003, the FASB issued a revision of the Interpretation (the

Revised Interpretation 46). Revised Interpretation 46 codifies both the proposed modifications and other decisions previously issued through certain FASB Staff Positions and supersedes the original Interpretation to include: (1) deferring the effective date of the Interpretation's provisions for certain variable interests, (2) providing additional scope exceptions for certain other variable interests, (3) clarifying the impact of troubled debt restructurings on the requirement to reconsider (a) whether an entity is a VIE or (b) which party is the primary beneficiary of a VIE, and (4) revising Appendix B of the original Interpretation to provide additional guidance on what constitutes a variable interest. Under the new guidance, application of the Revised Interpretation 46 is required in financial statements of public entities that have interests in structures that are commonly referred to as special-purpose entities for periods ending after December 15, 2003, and for all other types of variable interest entities is required in financial statements for periods ending after March 15, 2004. The Company's adoption of Revised Interpretation 46 did not have a material impact on its financial position or results of operations.

RECLASSIFICATIONS

Certain reclassifications have been made to prior periods to conform to current presentations.

Note 2: OTHER CHARGES

In February 2004, the Company announced its decision to consolidate its manufacturing operations in Jackson, Mississippi into the Company's Carthage, Mississippi facility. The Company acquired the Carthage facility when it purchased Choctaw Maid Farms in the fourth quarter of fiscal 2003 and, since that time, has undertaken a comprehensive analysis of all operations in the area and determined this consolidation would most effectively maintain the Company's competitiveness in its Mississippi operations. The Jackson location employs approximately 800 people and is a poultry processing facility, including processing and de-boning operations. As a result of this decision, the Company is anticipating total costs of \$9 million that includes approximately \$8 million of estimated impairment charges for assets to be disposed of and \$1 million of employee termination benefits. The Company is accounting for the closing of the Jackson operation in accordance with Statement of Financial Accounting Standards No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" (SFAS No. 146) and Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (SFAS No. 144). The Company recorded charges of \$8 million in the second quarter of fiscal 2004 for assets to be disposed. This amount is reflected in the Chicken segment as a reduction of operating income and included in the consolidated statements of income in other charges. The Jackson location will cease operations by August 1, 2004. As of March 27, 2004, no amounts had been paid and charged against the accrual. The Company anticipates recording additional costs of approximately \$1 million in the third quarter of fiscal 2004 related to employee termination benefits.

In December 2003, the Company announced its decision to close its Manchester, New Hampshire, and Augusta, Maine, Prepared Foods operations to further improve long-term manufacturing efficiencies. The Manchester operation employed approximately 550 people and primarily produced sandwich meat for foodservice customers. The Augusta facility employed approximately 170 people and produced hot dogs, sausages, boneless hams and deli turkey products. These locations ceased operations during the second quarter of fiscal 2004. As a result of this decision, the Company recorded total costs of \$24 million (\$21 million in the first quarter of fiscal 2004 and \$3 million in the second

quarter of fiscal 2004) that included \$4 million of costs related to closing the plants and \$20 million of estimated impairment charges for assets to be disposed. These amounts are reflected in the Prepared Foods segment as a reduction of operating income and included in the consolidated statements of income in other charges. The costs related to closing the plants include \$2 million of employee termination benefits and \$2 million of other plant closing related costs. The Company is accounting for the closing of the Manchester and Augusta

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operations in accordance with SFAS No. 146 and SFAS No. 144. At March 27, 2004, the accrual balance was \$3 million, as \$17 million in losses related to the disposal of assets have been realized, \$2 million related to employee termination benefits have been paid and \$2 million of other plant closing related costs have been paid. No material adjustments to the total accrual are anticipated at this time.

In April 2003, the Company announced its decision to close its Berlin, Maryland, poultry operation as part of its ongoing plant rationalization efforts. The Berlin poultry operation employed approximately 650 people and included a hatchery, a feed mill, live production and a processing facility. The facility ceased processing chickens November 12, 2003. As a result of this decision, the Company recorded total costs of \$29 million (\$4 million in the first quarter of fiscal 2004 and \$25 million in fiscal 2003) that included \$14 million related to closing the plant and \$15 million of estimated impairment charges for assets to be disposed. These amounts are reflected in the Chicken segment as a reduction of operating income and included in the consolidated statements of income in other charges. The costs related to closing the plant include \$9 million for estimated liabilities for the resolution of the Company's obligations under 209 grower contracts, and \$5 million of other related costs associated with the closing of the operation including plant clean-up costs and employee termination benefits. The Company is accounting for the closing of the Berlin operation in accordance with SFAS No. 146 and SFAS No. 144. At March 27, 2004, the accrual balance was \$3 million, as \$9 million of obligations under grower contracts and \$3 million of other closing costs had been paid, and losses related to the disposal of assets of \$14 million were realized. No material adjustments to the total accrual are anticipated at this time.

In the first quarter of fiscal 2003, the Company recorded \$47 million of costs related to the closing of its Stilwell, Oklahoma, and Jacksonville, Florida, plants that included \$26 million of costs related to closing the plants and \$21 million of estimated impairment charges for assets to be disposed. The costs related to closing the plants include \$17 million for estimated liabilities for the resolution of the Company's obligations under grower contracts, and \$9 million of other related costs associated with the closing of the plants including plant clean-up costs and employee termination benefits. The Company accounted for the closing of the Stilwell, Oklahoma and Jacksonville, Florida operations in accordance with Emerging Issues Task Force No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity" (EITF 94-3) and SFAS No. 144. The costs are reflected in the Chicken segment as a reduction of operating income and included in the consolidated statements of income in other charges. As of March 27, 2004, payments related to closing the plants have been made and losses related to the disposal of assets have been realized, thus fully utilizing the accrual balance. No material adjustments to the total accrual are anticipated at this time.

In the fourth quarter of fiscal 2002, the Company recorded \$26 million of costs related to the restructuring its live swine operations that consists of \$21 million of estimated liabilities for resolution of Company obligations under producer contracts and \$5 million of other related costs associated with this restructuring, including lagoon and pit closure costs and employee termination benefits. At March 27, 2004, the remaining accrual balance was \$14 million, as \$6 million of obligations under grower contracts and \$6 million of other related costs had been paid. The Company is accounting for the restructuring of its live swine operations in accordance with EITF 94-3 and Financial Accounting Standards No 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of", thus the total accrual of \$26 million was recorded in the fourth quarter of fiscal year 2002 and there was no effect on the Company's results of operations in fiscal years 2004 and 2003. No material adjustments to the total accrual are anticipated at this time.

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Note 3: BSE RELATED CHARGES

On December 23, 2003, the United States Department of Agriculture (USDA) announced that a single case of BSE had been diagnosed in a Washington State dairy cow. The effect on the Company's Beef segment caused by that announcement along with the decision of various countries to restrict imports of U.S. beef products resulted in the Company recording BSE related pre-tax charges of approximately \$61 million in the first quarter of fiscal 2004. These charges were included in costs of sales and primarily related to finished product inventory destined for international markets, whether in-transit, located at the shipping ports, or located within domestic storage, as well as live cattle inventory and open futures positions. No material adjustments were made in the second quarter to the BSE related accruals recorded in the first quarter of fiscal 2004 and none are anticipated in future quarters.

NOTE 4: FINANCIAL INSTRUMENTS

The Company purchases certain commodities in the course of normal operations such as corn, soybeans, livestock and natural gas. As part of the Company's on-going commodity risk management activities, the Company uses derivative financial instruments to reduce its exposure to various market risks related to these purchases. Generally, 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 that are designated and highly effective at meeting the risk reduction and correlation criteria are recorded using hedge accounting, as defined by SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" (SFAS No. 133), as amended. If a derivative instrument is a hedge, as defined by SFAS 133, changes in the fair value of the instrument will either be offset 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 will be immediately recognized in earnings as a component of cost of sales. Additionally, the Company holds certain positions, primarily in grain and livestock futures and options, for which it does not apply SFAS 133 hedge accounting, but instead marks these positions to fair value through earnings at each reporting date. The Company generally does not hedge anticipated transactions beyond 12 months.

The Company had derivative related balances totaling \$92 million and \$20 million recorded in other current assets at March 27, 2004, and September 27, 2003, respectively, and \$60 million and \$37 million recorded in other current liabilities at March 27, 2004, and September 27, 2003, respectively.

Derivative products related to grain procurement, such as futures and option contracts that meet the criteria for SFAS 133 hedge accounting, are considered cash flow hedges, as

they hedge against changes in the amount of future cash flows related to commodities procurement. As described above, the effective portion of the cumulative gain or loss on the derivative instrument is reported as a component of other comprehensive income (loss) in shareholders' equity and recognized into cost of sales in the same period or periods during which the hedged transaction affects earnings (for commodity grain hedges, this occurs when the chickens that consumed the hedged grain are sold). The Company applies SFAS 133 hedge accounting to derivative products related to grain procurement that are hedging physical grain contracts that have previously been purchased. The Company does not purchase derivative products related to grain procurement in excess of its physical grain consumption requirements.

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Based on the Company's evaluation of the grain markets, the Company entered into a portion of its derivative products related to grain procurement prior to purchasing the physical grain contracts. As a result of this timing, these derivative positions do not meet the requirements for SFAS 133 hedge accounting treatment. In connection with these economic hedges, the Company recognized pre-tax gains of approximately \$90 million and \$103 million in cost of sales for the three and six months ended March 27, 2004. The derivative gains were due primarily to the increase in grain futures prices during the quarter and the Company having a higher number of derivative positions in place during the quarter as compared to the same period in the prior year. There were no significant comparable amounts recorded during the three or six months periods of the prior year. Of the \$90 million recorded during the second quarter of fiscal 2004, \$29 million related to the mark-to-market of open positions at March 27, 2004. Ineffectiveness recorded related to the Company's hedges was not significant during the three and six months ended March 27, 2004 and March 29, 2003.

The Company recorded after tax gains related primarily to cash flow hedges of grain purchases of approximately \$45 million in other comprehensive income at March 27, 2004. Of this amount, approximately \$17 million reflects the Company's current mark-to-market of open SFAS 133 hedge positions as of March 27, 2004. The Company expects that these amounts will be recognized into cost of sales within the next 12 months. The Company generally does not hedge cash flows related to commodities beyond 12 months.

Note 5: INVENTORIES

Processed products, livestock (excluding breeders) and supplies and other are valued at the lower of cost (first-in, first-out) or market. Livestock includes live cattle, live chicken and live swine. 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. Live chicken consists of broilers and breeders. Breeders are stated at cost less amortization. The costs associated with breeders, including breeder chicks, feed and medicine, are accumulated up to the production stage and amortized to broiler inventory over the productive life of the flock using a standard unit of production. Total inventory consists of the following (in millions):

| | March 27, 2004 | September 27, 2003 |
|--------------------|-------------------|-----------------------|
| Processed products | \$ 1,056 | \$ 1,167 |
| Livestock | 534 | 532 |
| Supplies and other | 311 | 295 |
| Total inventory | <u>\$ 1,901</u> | <u>\$ 1,994</u> |

Note 6: PROPERTY, PLANT AND EQUIPMENT

The major categories of property, plant and equipment and accumulated depreciation, at cost, are as follows (in millions):

| | March 27, 2004 | September 27, 2003 |
|--|-------------------|-----------------------|
| Land | \$ 112 | \$ 113 |
| Buildings and leasehold improvements | 2,310 | 2,293 |
| Machinery and equipment | 3,937 | 3,886 |
| Land improvements and other | 189 | 184 |
| Buildings and equipment under construction | 226 | 177 |
| | <u>6,774</u> | <u>6,653</u> |
| Less accumulated depreciation | 2,781 | 2,614 |
| Net property, plant and equipment | <u>\$ 3,993</u> | <u>\$ 4,039</u> |

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Note 7: OTHER CURRENT LIABILITIES

Other current liabilities are as follows (in millions):

| | March 27, 2004 | September 27, 2003 |
|--------------------------------------|-------------------|-----------------------|
| Accrued salaries, wages and benefits | \$ 256 | \$ 263 |
| Self insurance reserves | 245 | 243 |
| Income taxes payable | 204 | 244 |
| Property and other taxes | 60 | 52 |
| Other | 291 | 345 |
| Total other current liabilities | <u>\$ 1,056</u> | <u>\$ 1,147</u> |

Note 8: LONG-TERM DEBT

The major components of long-term debt are as follows (in millions):

| | Maturity | March 27, 2004 | September 27, 2003 |
|---|------------|-------------------|-----------------------|
| Commercial paper (1.38% effective rate at 9/27/03) | 2004 | \$ - | \$ 32 |
| Revolving Credit Facilities | 2004-2006 | - | - |
| Senior notes and Notes (rates ranging from 6.13% to 8.25%) | 2004-2028 | 3,210 | 3,316 |
| Accounts Receivable Securitization | 2004, 2005 | - | - |
| Institutional notes (10.84% effective rate at 3/27/04 and 9/27/03) | 2004-2006 | 30 | 40 |
| Leveraged equipment loans (rates ranging from 4.67% to 5.99%) | 2005-2008 | 101 | 111 |
| Other | Various | 44 | 105 |
| Total debt | | 3,385 | 3,604 |
| Less current debt | | 399 | 490 |
| Total long-term debt | | \$ 2,986 | \$ 3,114 |

The revolving credit agreements, senior notes, notes and accounts receivable securitization debt contain various covenants, the more restrictive of which contain a maximum allowed leverage ratio and a minimum required interest coverage ratio. The Company was in compliance with these covenants at March 27, 2004.

The Company has unsecured revolving credit facilities totaling \$1 billion that support the Company's commercial paper program, letters of credit and other short-term funding needs. These facilities consist of \$200 million that expire in June 2004, \$300 million that expire in June 2005 and \$500 million that expire in September 2006. At March 27, 2004, and September 27, 2003, there were no amounts drawn under the revolving credit facilities.

The Company has a receivables purchase agreement with three co-purchasers to sell up to \$750 million of trade receivables that consists of \$375 million expiring in August 2004 and \$375 million expiring in August 2005. The receivables purchase agreement has been accounted for as a borrowing and has an

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interest rate based on commercial paper issued by the co-purchasers. Under this agreement, substantially all of the Company's 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 separate creditors that 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 March 27, 2004, and September 27, 2003, there were no amounts drawn under the receivables purchase agreement.

The Company guarantees debt of outside third parties, which involve letters of credit, a lease and grower loans, all of which are substantially collateralized by the underlying assets. Terms of the underlying debt range from one to 11 years and the maximum potential amount of future payments as of March 27, 2004, was \$66 million. The Company also maintains operating leases for various types of equipment, some of which contain residual value guarantees for the market value for assets at the end of the term of the lease. The terms of the lease maturities range from one to six years. The maximum potential amount of the residual value guarantees is approximately \$111 million, of which, approximately \$29 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 payments under these guarantees is not considered to be probable. At March 27, 2004, no liabilities for guarantees were recorded.

The Company has fully and unconditionally guaranteed \$476 million of senior notes issued by Tyson Fresh Meats, Inc. (TFM; formerly known as IBP, inc.), a wholly-owned subsidiary of the Company.

The following condensed consolidating financial information is provided for the Company, as guarantor, and for TFM, as issuer, as an alternative to providing separate financial statements for the issuer.

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Condensed Consolidating Statement of Income (unaudited) for the three months ended March 27, 2004

| | (in millions) | | | |
|-------------------------------------|---------------|----------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Sales | \$ 2,251 | \$ 3,906 | \$ (4) | \$ 6,153 |
| Cost of Sales | 1,898 | 3,774 | (4) | 5,668 |
| | 353 | 132 | - | 485 |
| Selling, General and Administrative | 125 | 83 | | 208 |
| Other Charges | 11 | 3 | | 14 |
| Operating Income | 217 | 46 | | 263 |

| | | | | |
|----------------------------|-------|-------|------|--------|
| Interest and Other Expense | 63 | 12 | | 75 |
| Income Before Income Taxes | 154 | 34 | | 188 |
| Provision for Income Taxes | 58 | 11 | | 69 |
| Net Income | \$ 96 | \$ 23 | \$ - | \$ 119 |

Condensed Consolidating Statement of Income (unaudited) for the three months ended March 29, 2003

| | (in millions) | | | |
|-------------------------------------|---------------|----------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Sales | \$ 1,990 | \$ 3,858 | \$ (3) | \$ 5,845 |
| Cost of Sales | 1,717 | 3,751 | (3) | 5,465 |
| | 273 | 107 | - | 380 |
| Selling, General and Administrative | 123 | 74 | | 197 |
| Operating Income | 150 | 33 | | 183 |
| Interest and Other Expense | 53 | 19 | | 72 |
| Income Before Income Taxes | 97 | 14 | | 111 |
| Provision for Income Taxes | 35 | 4 | | 39 |
| Net Income | \$ 62 | \$ 10 | \$ - | \$ 72 |

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Condensed Consolidating Statement of Income (unaudited) for the six months ended March 27, 2004

| | (in millions) | | | |
|-------------------------------------|---------------|----------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Sales | \$ 4,375 | \$ 8,291 | \$ (8) | \$ 12,658 |
| Cost of Sales | 3,746 | 8,041 | (8) | 11,779 |
| | 629 | 250 | - | 879 |
| Selling, General and Administrative | 259 | 157 | | 416 |
| Other Charges | 15 | 24 | | 39 |
| Operating Income | 355 | 69 | | 424 |
| Interest and Other Expense | 121 | 26 | | 147 |
| Income Before Income Taxes | 234 | 43 | | 277 |
| Provision for Income Taxes | 86 | 15 | | 101 |
| Net Income | \$ 148 | \$ 28 | \$ - | \$ 176 |

Condensed Consolidating Statement of Income (unaudited) for the six months ended March 29, 2003

| | (in millions) | | | |
|-------------------------------------|---------------|----------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Sales | \$ 3,967 | \$ 7,698 | \$ (18) | \$ 11,647 |
| Cost of Sales | 3,476 | 7,409 | (18) | 10,867 |
| | 491 | 289 | - | 780 |
| Selling, General and Administrative | 251 | 154 | | 405 |
| Other Charges | 47 | - | | 47 |
| Operating Income | 193 | 135 | | 328 |
| Interest and Other Expense | 117 | 39 | | 156 |
| Income Before Income Taxes | 76 | 96 | | 172 |
| Provision for Income Taxes | 27 | 34 | | 61 |
| Net Income | \$ 49 | \$ 62 | \$ - | \$ 111 |

[Table of Contents](#)**Condensed Consolidating Balance Sheet** (unaudited) as of March 27, 2004

| | (in millions) | | | |
|---|-----------------|-----------------|-------------------|------------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Assets | | | | |
| Current Assets: | | | | |
| Cash and cash equivalents | \$ 51 | \$ 19 | \$ | \$ 70 |
| Accounts receivable, net | 621 | 599 | (62) | 1,158 |
| Inventories | 1,062 | 839 | | 1,901 |
| Other current assets | 119 | 28 | | 147 |
| Total Current Assets | <u>1,853</u> | <u>1,485</u> | <u>(62)</u> | <u>3,276</u> |
| Net Property, Plant and Equipment | 2,237 | 1,756 | | 3,993 |
| Goodwill | 960 | 1,601 | | 2,561 |
| Intangible Assets | - | 178 | | 178 |
| Other Assets | 3,035 | 95 | (2,906) | 224 |
| Total Assets | <u>\$ 8,085</u> | <u>\$ 5,115</u> | <u>\$ (2,968)</u> | <u>\$ 10,232</u> |
| Liabilities and Shareholders' Equity | | | | |
| Current Liabilities: | | | | |
| Current debt | \$ 398 | \$ 1 | \$ | \$ 399 |
| Trade accounts payable | 397 | 395 | | 792 |
| Other current liabilities | 784 | 2,026 | (1,754) | 1,056 |
| Total Current Liabilities | <u>1,579</u> | <u>2,422</u> | <u>(1,754)</u> | <u>2,247</u> |
| Long-Term Debt | 2,486 | 500 | | 2,986 |
| Deferred Income Taxes | 441 | 236 | | 677 |
| Other Liabilities | 23 | 155 | | 178 |
| Shareholders' Equity | 3,556 | 1,802 | (1,214) | 4,144 |
| Total Liabilities and Shareholders' Equity | <u>\$ 8,085</u> | <u>\$ 5,115</u> | <u>\$ (2,968)</u> | <u>\$ 10,232</u> |

[Table of Contents](#)**Condensed Consolidating Balance Sheet** as of September 27, 2003

| | (in millions) | | | |
|---|-----------------|-----------------|-------------------|------------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Assets | | | | |
| Current Assets: | | | | |
| Cash and cash equivalents | \$ 15 | \$ 10 | \$ - | \$ 25 |
| Accounts receivable, net | 699 | 747 | (166) | 1,280 |
| Inventories | 1,049 | 945 | | 1,994 |
| Other current assets | 40 | 32 | | 72 |
| Total Current Assets | <u>1,803</u> | <u>1,734</u> | <u>(166)</u> | <u>3,371</u> |
| Net Property, Plant and Equipment | 2,222 | 1,817 | | 4,039 |
| Goodwill | 960 | 1,692 | | 2,652 |
| Intangible Assets | - | 182 | | 182 |
| Other Assets | 3,045 | 103 | (2,906) | 242 |
| Total Assets | <u>\$ 8,030</u> | <u>\$ 5,528</u> | <u>\$ (3,072)</u> | <u>\$ 10,486</u> |
| Liabilities and Shareholders' Equity | | | | |
| Current Liabilities: | | | | |

| | | | | |
|--|-----------------|-----------------|-------------------|------------------|
| Current debt | \$ 487 | \$ 3 | \$ - | \$ 490 |
| Trade accounts payable | 401 | 437 | | 838 |
| Other current liabilities | 611 | 2,394 | (1,858) | 1,147 |
| Total Current Liabilities | <u>1,499</u> | <u>2,834</u> | <u>(1,858)</u> | <u>2,475</u> |
| Long-Term Debt | 2,590 | 524 | | 3,114 |
| Deferred Income Taxes | 486 | 236 | | 722 |
| Other Liabilities | 55 | 166 | | 221 |
| Shareholders' Equity | 3,400 | 1,768 | (1,214) | 3,954 |
| Total Liabilities and Shareholders' Equity | <u>\$ 8,030</u> | <u>\$ 5,528</u> | <u>\$ (3,072)</u> | <u>\$ 10,486</u> |

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Condensed Consolidating Statement of Cash Flows (unaudited) for the three months ended March 27, 2004

| | (in millions) | | | |
|--|---------------|--------------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Cash Flows From Operating Activities: | | | | |
| Net income | \$ 96 | \$ 23 | \$ - | \$ 119 |
| Depreciation and amortization | 72 | 47 | | 119 |
| Plant closing-related charges | 10 | (3) | | 7 |
| Deferred income taxes and other | 2 | 27 | | 29 |
| Net changes in working capital | 48 | (38) | | 10 |
| Cash Provided by Operating Activities | <u>228</u> | <u>56</u> | | <u>284</u> |
| Cash Flows From Investing Activities: | | | | |
| Additions to property, plant and equipment | (83) | (24) | | (107) |
| Proceeds from sale of assets | 10 | - | | 10 |
| Net change in other assets and liabilities | (16) | (7) | | (23) |
| Cash Used for Investing Activities | <u>(89)</u> | <u>(31)</u> | | <u>(120)</u> |
| Cash Flows From Financing Activities: | | | | |
| Net change in debt | (80) | (25) | | (105) |
| Purchase of treasury shares | (29) | - | | (29) |
| Dividends | (14) | - | | (14) |
| Stock options exercised and other | 16 | - | | 16 |
| Cash Used for Financing Activities | <u>(107)</u> | <u>(25)</u> | | <u>(132)</u> |
| Effect of Exchange Rate Change on Cash | <u>(1)</u> | <u>(1)</u> | | <u>(2)</u> |
| Increase (Decrease) in Cash and Cash Equivalents | 31 | (1) | | 30 |
| Cash and Cash Equivalents at Beginning of Period | 20 | 20 | | 40 |
| Cash and Cash Equivalents at End of Period | <u>\$ 51</u> | <u>\$ 19</u> | <u>\$ -</u> | <u>\$ 70</u> |

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Condensed Consolidating Statement of Cash Flows (unaudited) for the three months ended March 29, 2003

| | (in millions) | | | |
|---------------------------------------|---------------|-------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Cash Flows From Operating Activities: | | | | |
| Net income | \$ 62 | \$ 10 | \$ - | \$ 72 |
| Depreciation and amortization | 63 | 49 | | 112 |

| | | | |
|--|--------------|--------------|--------------|
| Plant-closing related charges | (23) | - | (23) |
| Deferred income taxes and other | 29 | 2 | 31 |
| Net changes in working capital | 109 | (56) | 53 |
| Cash Provided by Operating Activities | <u>240</u> | <u>5</u> | <u>245</u> |
| Cash Flows From Investing Activities: | | | |
| Additions to property, plant and equipment | (61) | (21) | (82) |
| Proceeds from sale of assets | 3 | 1 | 4 |
| Net change in other assets and liabilities | 12 | 14 | 26 |
| Cash Used for Investing Activities | <u>(46)</u> | <u>(6)</u> | <u>(52)</u> |
| Cash Flows From Financing Activities: | | | |
| Net change in debt | (163) | (4) | (167) |
| Purchase of treasury shares | (14) | - | (14) |
| Dividends | (14) | - | (14) |
| Cash Used for Financing Activities | <u>(191)</u> | <u>(4)</u> | <u>(195)</u> |
| Effect of Exchange Rate Change on Cash | (2) | (1) | (3) |
| Increase (Decrease) in Cash and Cash Equivalents | 1 | (6) | (5) |
| Cash and Cash Equivalents at Beginning of Period | 59 | 17 | 76 |
| Cash and Cash Equivalents at End of Period | <u>\$ 60</u> | <u>\$ 11</u> | <u>\$ 71</u> |

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Condensed Consolidating Statement of Cash Flows (unaudited) for the six months ended March 27, 2004

| | (in millions) | | | |
|--|---------------|--------------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Cash Flows From Operating Activities: | | | | |
| Net income | \$ 148 | \$ 28 | \$ - | \$ 176 |
| Depreciation and amortization | 143 | 95 | | 238 |
| Plant closing-related charges | 32 | (3) | | 29 |
| Deferred income taxes and other | (39) | 3 | | (36) |
| Net changes in working capital | 181 | (43) | | 138 |
| Cash Provided by Operating Activities | <u>465</u> | <u>80</u> | | <u>545</u> |
| Cash Flows From Investing Activities: | | | | |
| Additions to property, plant and equipment | (189) | (42) | | (231) |
| Proceeds from sale of assets | 13 | - | | 13 |
| Net change in other assets and liabilities | (18) | (3) | | (21) |
| Cash Used for Investing Activities | <u>(194)</u> | <u>(45)</u> | | <u>(239)</u> |
| Cash Flows From Financing Activities: | | | | |
| Net change in debt | (193) | (26) | | (219) |
| Purchase of treasury shares | (38) | - | | (38) |
| Dividends | (27) | - | | (27) |
| Stock options exercised and other | 22 | - | | 22 |
| Cash Used for Financing Activities | <u>(236)</u> | <u>(26)</u> | | <u>(262)</u> |
| Effect of Exchange Rate Change on Cash | 1 | - | | 1 |
| Increase in Cash and Cash Equivalents | 36 | 9 | | 45 |
| Cash and Cash Equivalents at Beginning of Period | 15 | 10 | | 25 |
| Cash and Cash Equivalents at End of Period | <u>\$ 51</u> | <u>\$ 19</u> | <u>\$ -</u> | <u>\$ 70</u> |

Condensed Consolidating Statement of Cash Flows (unaudited) for the six months ended March 29, 2003

| | (in millions) | | | |
|---|---------------|--------------|-------------|--------------|
| | Tyson | TFM | Adjustments | Consolidated |
| Cash Flows From Operating Activities: | | | | |
| Net income | \$ 49 | \$ 62 | \$ - | \$ 111 |
| Depreciation and amortization | 135 | 93 | | 228 |
| Plant closing-related charges | 22 | - | | 22 |
| Deferred income taxes and other | 6 | (6) | | - |
| Net changes in working capital | 60 | (131) | | (71) |
| Cash Provided by Operating Activities | 272 | 18 | | 290 |
| Cash Flows From Investing Activities: | | | | |
| Additions to property, plant and equipment | (140) | (42) | | (182) |
| Proceeds from sale of assets | 6 | 5 | | 11 |
| Net change in other assets and liabilities | 13 | 24 | | 37 |
| Cash Used for Investing Activities | (121) | (13) | | (134) |
| Cash Flows From Financing Activities: | | | | |
| Net change in debt | (77) | (4) | | (81) |
| Purchase of treasury shares | (29) | - | | (29) |
| Dividends | (27) | - | | (27) |
| Stock options exercised and other | (2) | - | | (2) |
| Cash Used for Financing Activities | (135) | (4) | | (139) |
| Effect of Exchange Rate Change on Cash | 2 | 1 | | 3 |
| Increase in Cash and Cash Equivalents | 18 | 2 | | 20 |
| Cash and Cash Equivalents at Beginning of Period | 42 | 9 | | 51 |
| Cash and Cash Equivalents at End of Period | \$ 60 | \$ 11 | \$ - | \$ 71 |

Note 9: CONTINGENCIES

Listed below are certain claims made against the Company and its subsidiaries. In the Company's opinion, it has recorded appropriate and adequate reserves and accruals where necessary and the Company believes 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 of the Company. The Company believes it has substantial defenses to the claims made and intends to vigorously defend these cases.

Wage and Hour/ Labor Matters In 2000, the Wage and Hour Division of the U.S. Department of Labor (DOL) conducted an industry-wide investigation of poultry producers, including the Company, to ascertain compliance with various wage and hour issues. As part of this investigation, the DOL inspected 14 of the Company's processing facilities. On May 9, 2002, the Secretary of Labor filed a civil complaint against the Company in the U.S. District Court for the Northern District of Alabama. The complaint alleges that the Company violated the overtime provisions of the federal Fair Labor Standards Act (FLSA) at the Company's 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 has indicated in discovery that the case seeks to require the Company 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, an additional amount in unspecified liquidated damages, and an injunction against future violations at that facility and all other chicken processing facilities operated by the Company. The parties are in the process of concluding discovery. The Secretary of Labor's motion to extend certain case deadlines is pending before the court.

On June 22, 1999, 11 current and former employees of the Company filed the case of *M.H. Fox, et al. v. Tyson Foods, Inc. (Fox v. Tyson)* in the U.S. District Court for the Northern District of Alabama claiming the Company violated requirements of the FLSA. The suit alleges the Company failed to pay employees for all hours worked and/or improperly paid them for overtime hours. The suit specifically alleges that (1) employees should be paid for time taken to put on and take off certain working supplies at the beginning and end of their shifts and breaks and (2) the use of "mastercard" or "line" time fails to pay employees for all time actually worked. Plaintiffs seek to represent themselves and all similarly situated current and former employees of the Company, and plaintiffs seek reimbursement for an unspecified amount of unpaid wages, liquidated damages, attorney fees and costs. At filing, 159 current and/or former employees consented to join the lawsuit and, to date, approximately 5,100 consents have been filed with the court. Plaintiff's motion for conditional collective treatment and court-supervised notice to additional putative class members was denied on February 27, 2004. The plaintiffs refiled their motion for conditional collective treatment and court-supervised notice to additional putative class members on April 2, 2004. Discovery in this case is largely completed. No trial date has been set.

On August 22, 2000, seven employees of the Company filed the case of *De Asencio v. Tyson Foods, Inc.* in the U.S. District Court for the Eastern District of Pennsylvania. This lawsuit is similar to *Fox v. Tyson* in that the employees claim violations of the FLSA for allegedly failing to pay for time taken to put on, take off and sanitize certain working supplies, and violations of the Pennsylvania Wage Payment and Collection Law. Plaintiffs seek to represent themselves and all similarly situated current and former employees of the poultry processing plant in New Holland, Pennsylvania, and plaintiffs seek reimbursement for an unspecified amount of unpaid wages, liquidated damages, attorney fees and costs. Currently, there are approximately 500 additional current or former employees who have filed consents to join the lawsuit. The court, on January 30, 2001, ordered that notice of the lawsuit be issued to all potential plaintiffs at the New Holland facilities. On July 17, 2002, the court granted the plaintiffs' motion to certify the state law claims. On September 23, 2002, the Third Circuit Court of Appeals agreed to hear the Company's petition to review the court's decision to certify the state law claims. On September 8, 2003, the Court of Appeals reversed the district court's certification of a class under the Pennsylvania Wage Payment & Collection Law, ruling that those claims could not be pursued in federal court. The appellate court further ruled that the Company must reissue notice of their potential FLSA claims to approximately 1,500 employees

who did not previously receive notice. The Court of Appeals remanded the matter to the district court to proceed accordingly on September 30, 2003. Further proceedings in the district court are pending.

Substantially similar suits have been filed against several other integrated poultry companies. In addition, organizing activity conducted by representatives or affiliates of the United Food and Commercial Workers Union against the poultry industry has encouraged worker participation in *Fox v. Tyson* and the other lawsuits.

On November 5, 2001, a lawsuit entitled *Maria Chavez, et al. vs. IBP, Lasso Acquisition Corporation and Tyson Foods, Inc. (Chavez)*, was filed in the U.S. District Court for the Eastern District of Washington against TFM and the Company by several employees of TFM's Pasco, Washington, beef slaughter and processing facility alleging various violations of the FLSA, 29 U.S.C. Sections 201 - 219, as well as violations of the Washington State Minimum Wage Act, RCW chapter 49.46, Industrial Welfare Act, RCW chapter 49.12, and the Wage Deductions-Contribution-Rebates Act, RCW chapter 49.52. The

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Chavez lawsuit alleges TFM and/or the Company required employees to perform unpaid work related to the donning and doffing of certain personal protective clothing, both prior to and after their shifts, as well as during meal periods. Plaintiffs further allege that similar prior litigation entitled *Alvarez, et al. vs. IBP (Alvarez)*, which resulted in a \$3.1 million final judgment against TFM, supports a claim of collateral estoppel and/or is res judicata as to the issues raised in this new litigation. Plaintiffs are seeking reimbursement for an unspecified amount of damages, exemplary damages, liquidated damages, prejudgment interest, attorney fees and costs. TFM filed a timely Notice of Appeal in *Alvarez* and plaintiffs filed a timely notice of Cross-Appeal. On August 5, 2003, the Ninth Circuit Court of Appeals affirmed the lower court's decision in part and reversed the lower court's decision in part, and remanded the case to the lower court for recalculation of damages. If the ruling of the Ninth Circuit Court of Appeals is upheld in its entirety, TFM will have additional exposure in *Alvarez* of approximately \$5 million. TFM filed a petition for rehearing by the panel of the Ninth Circuit Court of Appeals that heard *Alvarez* or, in the alternative, a rehearing en banc, which was denied on December 2, 2003. It also filed a petition to certify state law claims to the Washington Supreme Court which was denied on September 23, 2003. On December 5, 2003, TFM filed a Petition to Stay the Mandate indicating that it will be filing a Petition for Certiorari with the U.S. Supreme Court seeking the Court's review of the Ninth Circuit's adverse opinion. A Stay of the Mandate was ordered by the Ninth Circuit on December 10, 2003. A Petition for Certiorari was filed with the U.S. Supreme Court on February 26, 2004. Briefing on the Petition is now complete and the Company is awaiting a decision from the U.S. Supreme Court. *Chavez* initially was pursued as an opt-in, collective action under 29 U.S.C. 216(b), but the U.S. District Court for the Eastern District of Washington granted plaintiff's motion seeking certification of a class of opt-out, state law plaintiffs under Federal Rule of Civil Procedure 23 and notice has been sent to potential state law claim class members. The state-law class is now closed and contains approximately 3,900 class members, including approximately 1,200 on the federal claim. A trial date of September 7, 2004 in *Chavez* has been set by the court.

On November 21, 2002, a lawsuit entitled *Emily D. Jordan, et al. v. IBP, Inc. and Tyson Foods, Inc.*, was filed in the U.S. District Court for the Middle District of Tennessee. Ten current and former hourly employees of TFM's case-ready facility in Goodlettsville, Tennessee filed a complaint on behalf of themselves and other unspecified, allegedly "similarly situated" employees, claiming that the defendants have violated the overtime provisions of the FLSA. To date, approximately 100 other current and/or former employees have consented to the suit. The suit alleges that the Company has failed to pay employees for all hours worked from the plant's commencement of operations under TFM's control in April 2001. The Company acquired the plant as part of its acquisition of TFM. In particular, the suit alleges that 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. The suit also alleges that the Company deducts 30 minutes per day from employees' paychecks regardless of whether employees obtain a full 30-minute period for their meal. Plaintiffs are seeking a declaration that the defendants did not comply with the FLSA, 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 January 10, 2003, another 31 employees from Tennessee filed consents to join the lawsuit as plaintiffs. On January 15, 2003, the Company filed an answer to the complaint denying any liability. On January 14, 2003, the named plaintiffs filed a motion for expedited court-supervised notice to prospective class members. The motion sought to conditionally certify a class of similarly situated employees at all of TFM's non-unionized facilities that have not been the subject of FLSA litigation. Plaintiffs then withdrew a request for conditional certification of similarly situated employees at all of TFM's non-unionized facilities and rather sought to include all non-exempt employees that have worked at the Goodlettsville facility since its opening on April 1, 2001. On June 9, 2003, the Company filed a Motion for Summary Judgment seeking the applicability of the injunction entered by the U.S. District Court for the District of Kansas and affirmed by the U.S. Court of Appeals for the Tenth

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Circuit (*Metzler v. IBP, inc. 127 F. 3rd 959, 10th Cir. 1997*), which the Company contends has a preclusive effect as to plaintiff's claims based on pre- and post-shift activities. The Plaintiffs are conducting discovery limited to that issue in order to respond to said Motion by June 18, 2004. On November 17, 2003, the district court conditionally certified a collective action composed of similarly situated current and former employees at the Goodlettsville facility based upon clothes changing and washing activities and unpaid production work during meal periods, since the plant operations began in April 2001. Class Notices to approximately 4,500 prospective class members were mailed on January 21, 2004. Presently, approximately 500 current and former employees have opted into the class.

Environmental Matters On October 23, 2001, a putative class action lawsuit was filed in the District Court for Mayes County, Oklahoma, against the Company by R. Lynn Thompson and Deborah S. Thompson on behalf of all owners of Grand Lake O' the Cherokee's littoral (lake front) property. The suit alleges that the Company "or entities over which it has operational control" conduct operations in such a way as to interfere with the putative class action plaintiffs' use and enjoyment of their property, allegedly caused by diminished water quality in the lake. Plaintiffs are seeking injunctive relief and an unspecified amount of compensatory damages, punitive damages, attorney fees and costs. Simmons Foods, Inc. ("Simmons") and Peterson Farms, Inc. ("Peterson") have been joined as defendants. The Company and Simmons are seeking leave to file a third party complaint against entities that contribute wastes and wastewater into Grand Lake. The class certification hearing was held in October 2003. On December 11, 2003, the trial court entered an order which granted class certification. On January 12, 2004, the Company, Simmons and Peterson filed a Petition in Error (the "Petition") in the Oklahoma Supreme Court which challenges and seeks appellate level review of the trial court's certification order. The Oklahoma Supreme Court has not yet scheduled proceedings on the Petition.

Securities Matters Between January and March 2001, a number of lawsuits were filed by certain stockholders in the U.S. District Court for the District of South Dakota and one suit filed in the U.S. District Court for the Southern District of New York seeking to certify a class of all persons who purchased IBP, inc. ("IBP") stock between February 7, 2000, and January 25, 2001. The plaintiff in the New York action voluntarily dismissed and refiled its complaint in South Dakota, where the suits were consolidated under the name *In re IBP, inc. Securities Litigation* and a single, consolidated amended complaint was filed. The complaint, seeking unspecified compensatory damages, alleged that IBP and certain members of management violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and claimed IBP issued materially false statements about IBP's financial results in order to inflate its stock price. IBP filed a Motion to Dismiss on December 21, 2001, which was then fully briefed. While the motion was awaiting decision, IBP and the plaintiffs reached a tentative settlement of all claims, as reflected by a Memorandum of Understanding ("MOU") that was executed on March 19, 2003. In July 2003, a finalized Stipulation of Settlement consistent with the MOU was executed and submitted to the court for its preliminary approval. In light of this tentative settlement, IBP was permitted by the court to withdraw its pending motion to dismiss, without prejudice. On July 31, 2003, the court issued an order preliminarily

approving the settlement, preliminarily certifying a Settlement Class of all persons who purchased IBP common stock during the period from February 7, 2000, through January 25, 2001, and approving proposed notice to the Settlement Class members. A class notice was subsequently provided by plaintiffs to class members, informing them, among other things, of the tentative settlement and of their ability to file objections within a required period. No objections to the settlement were filed by class members. On February 24, 2004, the court granted final approval to the settlement and issued a judgment order consistent with its terms that, among other things, dismissed all of plaintiffs' claims with prejudice. No appeals from this judgment or any other order were taken, and the time for any such appeal has expired.

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Between June 22 and July 20, 2001, various plaintiffs commenced actions (the Delaware Federal Actions) against the Company, Don Tyson, John Tyson and Les Baledge in the U.S. District Court for the District of Delaware, seeking monetary damages on behalf of a purported class of those who sold IBP stock from March 29, 2001, when the Company announced its intention to terminate its Merger Agreement with IBP, through June 15, 2001, when a Delaware state court rendered its Post-Trial Opinion ordering the merger to proceed. Plaintiffs in the various actions alleged that the defendants violated federal securities laws by making, causing or allowing to be made, certain allegedly false and misleading statements in a March 29, 2001, press release issued in connection with the Company's attempted termination of the Merger Agreement. The plaintiffs alleged that, as a result of the defendants' alleged conduct, purported class members were harmed by an alleged artificial deflation in the price of IBP's stock during the proposed class period. The various actions were subsequently consolidated under the caption *In re Tyson Foods, Inc. Securities Litigation* and, on December 4, 2001, the plaintiffs in the consolidated action filed a Consolidated Class Action Complaint. On January 22, 2002, the defendants filed a motion to dismiss the consolidated complaint. By memorandum order dated October 23, 2002, the court granted in part and denied in part the defendants' motion to dismiss. On October 6, 2003, the court certified a class consisting of those who purchased IBP securities on or before March 29, 2001, and subsequently sold such securities from March 30 through June 15, 2001, inclusive, and sustained damages as a result of such transaction. Discovery in the case has concluded. Plaintiffs and defendants have each filed motions for summary judgment, and oral arguments on those motions is scheduled for May 27, 2004. In the event summary judgment is not granted, a jury trial date of August 11, 2004 has been set.

General Matters In July 1996, certain cattle producers filed *Henry Lee Pickett, et al. vs. IBP, inc.* in the U.S. District Court, Middle District of Alabama, seeking certification of a class of all cattle producers. The complaint alleged that TFM (then known as IBP) used its market power and alleged "captive supply" agreements to reduce the prices paid by TFM on purchases of cattle in the cash market in alleged violation of the Packers and Stockyards Act ("PSA"). Plaintiffs sought injunctive and declaratory relief, as well as actual and punitive damages. Plaintiffs submitted an amended expert report on November 19, 2003, showing alleged damages on all cash market purchases by TFM of approximately \$2.1 billion. Trial of this matter began on January 12, 2004, and concluded on February 10, 2004. On February 17, 2004, a jury returned a verdict against the Company on liability and gave an "advisory" verdict on damages that estimated the impact on the cash market (i.e., a group larger than the class) as \$1.28 billion. On February 25, 2004, the Company filed a renewed motion requesting the Court to enter a judgment as a matter of law ("JMOL") for the Company. On March 1, 2004, the plaintiffs filed motions asking the Court to enter the \$1.28 billion advisory verdict as an award of damages to the plaintiffs and requesting prejudgment interest. On March 22, 2004, the Court denied the plaintiff's motions for entry of a damages award. On April 23, 2004, the Court granted the Company's JMOL motion, and held (i) the Company had legitimate business reasons for using "captive supplies," (ii) there was "no evidence before the Court to suggest that [the Company's] conduct is illegal," and (iii) "plaintiffs failed to present evidence at trial to sustain their burden with respect to liability and damages." The plaintiffs have stated they will appeal the Court's entry of judgment in favor of the Company. Management believes, consistent with the Court's opinion, that TFM's use of marketing agreements and other contracts for the purchase of cattle do not violate the PSA and that TFM has acted properly and lawfully in its dealings with cattle producers.

On September 12, 2002, 82 individual plaintiffs filed *Michael Archer, et al. v. Tyson Foods, Inc. and The Pork Group, Inc.*, CIV 2002-497, in the Circuit Court of Pope County, Arkansas. On August 18, 2002, the Company announced a restructuring of its live swine operations which, among other things, resulted in the discontinuance of relationships with approximately 130 contract hog producers, including the plaintiffs. In their complaint, the plaintiffs allege that the Company committed fraud and should be promissorially estopped from terminating the parties' relationship. The plaintiffs seek an unspecified amount of compensatory damages, punitive damages, attorney fees and costs. The Company has filed a

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motion to Stay All Proceedings and Compel Arbitration which was denied. That decision was appealed to the Arkansas Supreme Court by the Company and affirmed. The case was remanded to the Circuit Court and discovery is proceeding.

Note 10: DEFERRED COMPENSATION

In July 2003, the Compensation Committee authorized the Company to award performance based shares of the Company's Class A Common Stock to certain senior executive officers on the first business day of each of the Company's 2004, 2005 and 2006 fiscal years having an initial maximum aggregate value of \$4.4 million on the date of each award. The vesting of the performance based shares for the 2004 and 2005 awards is over three years and the vesting of the 2006 award is over two and one-half years (the Vesting Period), each award being subject to the attainment of Company goals determined by the Compensation Committee prior to the date of the award. Each quarter during the Vesting Period, the Company reviews progress toward attainment of Company goals and determines if it is appropriate to record any adjustment to the deferred compensation liability for the anticipated vesting of the shares. The attainment of Company goals can only be finally determined at the end of the Vesting Period. If the shares vest the ultimate expense to the Company recognized over the Vesting Period will be equal to the Class A Common Stock price on the date the shares vest times the number of shares awarded.

Note 11: PENSIONS AND OTHER POSTRETIREMENT BENEFITS

Effective January 1, 2004, the Company implemented a new defined benefit plan for certain contracted officers. Included in this plan is unrecognized prior service cost of \$7 million. The prior service cost will be amortized over the 12 year average remaining service life of the participants in the plan in accordance with Company policy.

Note 12: EARNINGS PER SHARE

The following table sets forth the computation of basic and diluted earnings per share (in millions, except per share data):

| Three Months Ended | | Six Months Ended | |
|--------------------|-------------------|-------------------|-------------------|
| March 27, 2004 | March 29, 2003 | March 27, 2004 | March 29, 2003 |

Numerator:

| | | | | | | | | |
|--|----|------|----|------|----|------|----|------|
| Net income | \$ | 119 | \$ | 72 | \$ | 176 | \$ | 111 |
| Denominator: | | | | | | | | |
| Denominator for basic earnings per share- | | | | | | | | |
| Weighted average shares | | 345 | | 346 | | 345 | | 346 |
| Effect of dilutive securities: | | | | | | | | |
| Stock options and restricted stock | | 11 | | 6 | | 11 | | 7 |
| Denominator for diluted earnings per share- | | | | | | | | |
| Adjusted weighted average shares and assumed conversions | | 356 | | 352 | | 356 | | 353 |
| Basic earnings per share | \$ | 0.34 | \$ | 0.21 | \$ | 0.51 | \$ | 0.32 |
| Diluted earnings per share | \$ | 0.33 | \$ | 0.20 | \$ | 0.49 | \$ | 0.31 |

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Note 13: COMPREHENSIVE INCOME

The components of comprehensive income are as follows (in millions):

| | Three Months Ended | | Six Months Ended | |
|--|--------------------|----------------|------------------|----------------|
| | March 27, 2004 | March 29, 2003 | March 27, 2004 | March 29, 2003 |
| Net income | \$ 119 | \$ 72 | \$ 176 | \$ 111 |
| Other comprehensive income (loss), net of tax: | | | | |
| Currency translation adjustment | (3) | 10 | 6 | 10 |
| Derivative gain | 37 | - | 45 | 2 |
| Derivative reclassified to income statement | 1 | 2 | (2) | 1 |
| Total comprehensive income | \$ 154 | \$ 84 | \$ 225 | \$ 124 |

The related tax effects allocated to the components of comprehensive income are as follows (in millions):

| | Three Months Ended | | Six Months Ended | |
|---|--------------------|----------------|------------------|----------------|
| | March 27, 2004 | March 29, 2003 | March 27, 2004 | March 29, 2003 |
| Income tax benefit (expense): | | | | |
| Derivative gain | \$ (24) | \$ - | \$ (29) | \$ (1) |
| Derivative reclassified to income statement | - | (1) | 1 | (1) |
| Total income tax expense | \$ (24) | \$ (1) | \$ (28) | \$ (2) |

Note 14: SUPPLEMENTAL CASH FLOW INFORMATION

The following non-cash transaction was excluded from the statement of cash flows for the six months ended March 27, 2004. The \$91 million change in goodwill in the first quarter of fiscal 2004 from the September 27, 2003 balance and the corresponding change in other current liabilities is due to an adjustment of pre-acquisition tax liabilities assumed as part of the TFM acquisition. The Company received formal approval during the first quarter from The Joint Committee on Taxation of the U.S. Congress for issues relating to certain pre-acquisition years. As a result of this approval, the accrual of \$91 million of pre-acquisition tax liability was no longer needed.

Note 15: TRANSACTION WITH RELATED PARTY

In the second quarter of fiscal 2004, the Company purchased 1,028,577 shares of the Company's Class A Common Stock in a private transaction with Don Tyson, a director and managing general partner of the Tyson Limited Partnership, a principal shareholder of the Company. The purchase of those shares from Mr. Tyson, which was approved by the Governance Committee of the board of directors on January 29, 2004, was based on the closing price of the Company's Class A Common Stock on the New York Stock Exchange on the date of such approval.

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Note 16: SEGMENT REPORTING

The Company operates in five business segments: Chicken, Beef, Pork, Prepared Foods and Other. The Company measures segment profit as operating income.

Chicken segment is primarily involved in the processing of live chickens into fresh, frozen and value-added chicken products sold through domestic foodservice, domestic food retailers, wholesale club markets that service small foodservice operations, small businesses and individuals, as well as specialty and commodity distributors who deliver to restaurants, schools and international markets throughout the world. The Chicken segment also includes sales from allied products and the chicken breeding stock subsidiary.

Beef segment is primarily involved in the processing of live fed cattle and fabrication of dressed beef carcasses into primal and sub-primal meat cuts and case-ready products. It also involves deriving value from allied products such as hides and variety meats for sale to further processors and others. The Beef segment markets its products to food retailers, distributors, wholesalers, restaurants, hotel chains and other food processors in domestic and international markets. Allied products are also marketed to manufacturers of pharmaceuticals and technical products.

Pork segment is primarily involved in the processing of live market hogs and fabrication of pork carcasses into primal and sub-primal cuts and case-ready products. This segment also represents the Company's live swine group and related allied product processing activities. The Pork segment markets its products to food retailers, distributors, wholesalers, restaurants, hotel chains and other food processors in domestic and international markets. It also sells allied products to pharmaceutical and technical products manufacturers, as well as live swine to pork processors.

Prepared Foods segment includes the Company's operations that manufacture and market frozen and refrigerated food products. Products include pepperoni, beef and pork toppings, pizza crusts, flour and corn tortilla products, appetizers, hors d'oeuvres, desserts, prepared meals, ethnic foods, soups, sauces, side dishes, specialty pasta and meat dishes as well as branded and processed meats. The Prepared Foods segment markets its products to food retailers, distributors, wholesalers, restaurants and hotel chains.

Other segment includes the logistics group and other corporate activities not identified with specific protein groups.

Information on segments and a reconciliation to income before taxes on income are as follows, (in millions):

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| | Three Months Ended | | Six Months Ended | |
|----------------------------|--------------------|-------------------|-------------------|-------------------|
| | March 27, 2004 | March 29, 2003 | March 27, 2004 | March 29, 2003 |
| Sales | | | | |
| Chicken | \$ 2,050 | \$ 1,828 | \$ 3,961 | \$ 3,623 |
| Beef | 2,695 | 2,790 | 5,830 | 5,505 |
| Pork | 732 | 597 | 1,468 | 1,191 |
| Prepared Foods | 662 | 618 | 1,372 | 1,302 |
| Other | 14 | 12 | 27 | 26 |
| Total Sales | <u>\$ 6,153</u> | <u>\$ 5,845</u> | <u>\$ 12,658</u> | <u>\$ 11,647</u> |
| Operating Income: | | | | |
| Chicken | \$ 189 (a) | \$ 45 | \$ 305 (d) | \$ 58 (g) |
| Beef | (2) | 6 | (31) (e) | 53 |
| Pork | 34 | 24 | 83 | 48 |
| Prepared Foods | 20 (b) | 7 | 26 (f) | 36 |
| Other | 22 | 101 (c) | 41 | 133 (h) |
| Total Operating Income | <u>263</u> | <u>183</u> | <u>424</u> | <u>328</u> |
| Other Expense | 75 | 72 | 147 | 156 |
| Income before Income Taxes | <u>\$ 188</u> | <u>\$ 111</u> | <u>\$ 277</u> | <u>\$ 172</u> |

a. Includes \$8 million of pre-tax charges related to the closing of the Jackson, Mississippi, poultry operation.

b. Includes \$6 million of pre-tax charges related to the closings of the Manchester, New Hampshire, Augusta, Maine, and Mexican Original Fayetteville, Arkansas facilities.

c. Includes \$94 million of pre-tax gains related to vitamin antitrust litigation settlements received.

d. Includes \$12 million of pre-tax charges related to the closings of the Berlin, Maryland, and Jackson, Mississippi, poultry operations.

e. Includes \$61 million of pre-tax BSE related charges.

f. Includes \$27 million of pre-tax charges related to the closings of the Manchester, New Hampshire, Augusta, Maine, and Mexican Original Fayetteville, Arkansas facilities.

g. Includes \$47 million of pre-tax charges related to the closing of the Stilwell, Oklahoma, and Jacksonville, Florida, poultry operations.

h. Includes \$122 million of pre-tax gains related to vitamin antitrust litigation settlements received.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

RESULTS OF OPERATIONS

Overview

The Company produces, distributes and markets chicken, beef, pork and prepared foods and related allied products. It is the world's largest processor and marketer of chicken, beef and pork products, and is also the second largest publicly traded food company in the United States and has one of the most recognized brand names in the food industry. The Company's primary operations are conducted in four segments: Chicken, Beef, Pork and Prepared Foods. Some of the key factors that influence the Company's business are market prices for the Company's chicken, beef and pork products, customer demand for the Company's products, the ability to maintain and grow relationships with customers and introduce new and innovative products to the marketplace, accessibility of international markets, the cost of live cattle and hogs, raw materials and grain and operating efficiencies of the Company's facilities.

Earnings for the second quarter of fiscal 2004 were \$119 million or \$0.33 per diluted share compared to \$72 million or \$0.20 per diluted share for the second quarter of fiscal 2003. Pre-tax earnings for the second quarter of fiscal 2004 included \$14 million of costs, or \$.02 per diluted share, related to prepared foods and poultry plant closings along with an approximate \$50 million net benefit in the Chicken segment from the Company's on-going commodity risk management hedging activities and grain purchases. Pre-tax earnings for the second quarter of fiscal 2003 included \$94 million or \$0.17 per diluted share, received in connection with vitamin antitrust litigation.

Earnings for the first six months of fiscal 2004 were \$176 million or \$0.49 per diluted share compared to \$111 million or \$0.31 per diluted share for the same period last year. Included in pre-tax earnings for the first six months of fiscal 2004 was approximately \$61 million or \$0.11 per diluted share, of BSE related charges, approximately \$39 million, or \$0.07 per diluted share, related to poultry and prepared foods plant closings and an approximate \$60 million net benefit in the Chicken segment from the Company's on-going commodity risk management hedging activities and grain purchases. Pre-tax earnings for the first six months of fiscal 2003 included approximately \$122 million, or \$0.22 per diluted share, received in connection with vitamin antitrust litigation, and approximately \$47 million, or \$0.09 per diluted share, of costs related to closing of two poultry operations.

The Company recognized pre-tax gains of approximately \$90 million and \$103 million for the three and six months ended March 27, 2004, related to on-going commodity risk management hedging activities related to the Company's purchases of derivative products related to grain procurement that did not qualify for SFAS 133 hedge accounting. These gains primarily resulted from the increase in futures prices during the quarter and the Company having a higher number of derivative positions in place during the quarter as compared to the same period in the prior year. These gains offset an estimated \$40 million and \$43 million increase in physical grain purchase costs for the three and six months ended March 27, 2004, as compared to the prior year.

On December 23, 2003, the USDA announced that a single case of BSE had been diagnosed in a Washington state dairy cow. The effect on the Company's Beef segment caused by that announcement along with the decision of various countries to restrict imports of U.S. beef products resulted in the Company recording BSE related pre-tax charges of approximately \$61 million in the first quarter of fiscal 2004. These charges were included in costs of sales and primarily relate to finished product inventory destined for international markets, whether in-transit, located at the shipping ports, or located within domestic storage, live cattle inventory and open futures positions. No material adjustments were made in the second quarter to the BSE related accruals recorded in the first quarter of fiscal 2004 and none are anticipated in future quarters.

Second Quarter of Fiscal 2004 vs. Second Quarter of Fiscal 2003

Sales increased \$308 million and 5.3%, with a 10.1% increase in price and a 4.4% decrease in volume. Volumes declined due to a reduction in international export activity resulting from import restrictions imposed by various countries.

Cost of sales increased \$203 million or 3.7%. As a percent of sales, cost of sales decreased to 92.1% from 93.5%. This decrease was primarily due to increased sales prices, the Company's on-going commodity risk management hedging activities during the recent increases in prices of corn and soybean meal, and increased operational efficiencies in the Chicken segment, partially offset by increases in grain costs in the Chicken segment, higher live cattle prices in the Beef segment and the \$94 million benefit received in connection with the vitamin antitrust litigation in the second quarter of fiscal 2003.

Selling, general and administrative expenses increased \$11 million or 5.6%. As a percentage of sales, selling, general and administrative expenses remained constant at 3.4%. The increase was primarily due to an increase in personnel related and incentive-based compensation of approximately \$15 million and a reversal of approximately \$8 million for legal accruals in the second quarter of fiscal 2003 which were no longer required due to cases being closed. The increases in selling, general and administrative expenses were partially offset by approximately \$9 million received during the quarter related to a legal settlement from one of the Company's insurance providers.

Other charges include plant closing costs of \$14 million recorded in the second quarter of fiscal 2004 primarily related to closing of the Company's Jackson, Mississippi facility and additional costs related to the previously announced closing of its Manchester, New Hampshire and Augusta, Maine facilities.

Interest expense increased \$1 million or 1.4%, primarily resulting from \$7 million in charges from the early redemption of Tyson de Mexico preferred shares, as well as the Company's on-going efforts to buy back some of our bonds at attractive prices when available in the market, offset by reduced interest expense resulting from lower levels of debt. Excluding the \$7 million in charges noted above, the overall weighted average borrowing rate increased from 7.0% to 7.4%, while the Company's average indebtedness decreased 12.6%.

The effective tax rate for the second quarter of fiscal 2004 increased to 36.8% compared to 35.5% in the second quarter of fiscal 2003. The Extraterritorial Income Exclusion (ETI) reduced the second quarter effective rate by 0.4% compared to 2.0% in the same period last year. The 2004 estimated ETI was reduced during the second quarter of fiscal 2004 due to a reduction in fresh meats international business related to the December BSE case diagnosed in the state of Washington.

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Segment Results

Information on segments is as follows (in millions):

| Three Months Ended | | | | | |
|--------------------|--------------------|-------|---------------------|--------|---------------------------|
| Sales March 27, | Sales March 29, | Sales | Sales Percentage | Volume | Average Sales Price |

| | 2004 | 2003 | Change | Change | Change | Change |
|------------|----------|----------|--------|--------|---------|--------|
| Chicken | \$ 2,050 | \$ 1,828 | \$ 222 | 12.1% | (2.1%) | 14.6% |
| Beef | 2,695 | 2,790 | (95) | (3.4%) | (11.7%) | 9.4% |
| Pork | 732 | 597 | 135 | 22.6% | 5.6% | 15.8% |
| Prep Foods | 662 | 618 | 44 | 7.1% | 2.2% | 4.9% |
| Other | 14 | 12 | 2 | 16.7% | N/A | N/A |
| Total | \$ 6,153 | \$ 5,845 | \$ 308 | 5.3% | (4.4%) | 10.1% |

| | Three Months Ended | | | | |
|------------|---|--|--------------------------------------|--|--|
| | Operating Income (Loss) March 27, 2004 | Operating Income March 29, 2003 | Operating Income (Loss) Change | Operating Margin March 27, 2004 | Operating Margin March 29, 2003 |
| Chicken | \$ 189 | \$ 45 | \$ 144 | 9.2% | 2.5% |
| Beef | (2) | 6 | (8) | (0.1%) | 0.2% |
| Pork | 34 | 24 | 10 | 4.6% | 4.0% |
| Prep Foods | 20 | 7 | 13 | 3.0% | 1.2% |
| Other | 22 | 101 | (79) | N/A | N/A |
| Total | \$ 263 | \$ 183 | \$ 80 | 4.3% | 3.1% |

Chicken segment sales increased in the second quarter of fiscal 2004, compared to the same period last year. Foodservice chicken sales increased 12.9%, retail chicken sales increased 12.8% and international chicken sales increased 10.8%. Operating income for the quarter benefited from our on-going commodity risk management hedging activities, which provided approximately \$90 million of benefit to offset an estimated \$40 million of increased grain costs (based on year over year increases in grain markets), higher market prices primarily due to increased leg quarter and breast meat prices, continued improvements in pricing and product mix, and improved operating costs. Segment operating income also includes \$8 million of accruals related to plant closing costs that were recognized during the quarter. Chicken segment sales volumes decreased due to a reduction in international export activity resulting from import restrictions by various countries caused by the avian influenza outbreaks in the United States.

Beef segment sales decreased in the second quarter of fiscal 2004, compared to the same period last year. Domestic fresh meat beef sales increased 4.3%, international beef sales decreased 39.9% and case-ready beef sales increased 8.8%. Operating income decreased due to lower domestic volumes and live cost increases which were not offset by corresponding increases in cut-out values and drop credits due to the lack of export markets, offset by increased volumes and margins by our Lakeside operation in Canada. The diagnosis of a single case of BSE in a Washington state dairy cow in the first quarter of fiscal 2004 along with the resulting import restrictions on U.S. beef products imposed by various countries continues to negatively impact the Beef segment's results of operations. No material adjustments were made in the second quarter to the BSE related accruals recorded in the first quarter of fiscal 2004.

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Pork segment sales increased in the second quarter of fiscal 2004, compared to the same period last year as domestic fresh meat pork sales increased 17.1%, international pork sales increased 73.5%, case-ready pork sales increased 33.6% and live swine sales decreased 37.7%. The increase in the Pork segment's operating income is due to higher average selling prices and improved drop credits as pork benefited from stronger international markets and operating efficiencies due to increased volume year over year, more than offsetting increases in live costs.

Prepared Foods segment sales increased in the second quarter of fiscal 2004 compared to the same period last year as foodservice prepared foods sales increased 14.1%, international prepared foods sales increased 1.6% and retail prepared foods sales decreased slightly. Excluding plant closing costs of approximately \$6 million recorded in the second quarter of fiscal 2004, operating income was approximately \$26 million and 3.9% of sales. The increase is primarily due to higher average selling prices and increased volumes, partially offset by increased raw material prices.

Other segment operating income decreased primarily due to settlements of \$94 million received in the second quarter of fiscal 2003 related to vitamin antitrust litigation.

Six Months of Fiscal 2004 vs. Six Months of Fiscal 2003

Sales increased \$1.0 billion and 8.7%, with a 12.9% increase in price and a 3.7% decrease in volume. Volumes declined due to a reduction in international export activity resulting from import restrictions imposed by various countries.

Cost of sales increased \$912 million or 8.4%. As a percent of sales, cost of sales decreased to 93.1% from 93.3%. This decrease was primarily due to increased sales prices, the Company's on-going commodity risk management hedging activities during the recent increases in prices of corn and soybean meal, and increased operational efficiencies in the Chicken segment partially offset by the increases in grain costs in the Chicken segment, BSE related charges, higher live cattle prices in the Beef segment, and the \$122 million benefit received in connection with the vitamin antitrust litigation in the first six months of fiscal 2003.

Selling, general and administrative expenses increased \$11 million or 2.7%. As a percentage of sales, selling, general and administrative expenses decreased to 3.3% from 3.5%. The increase in expenses was primarily due to an increase in personnel related and incentive-based compensation of approximately \$16 million and a reversal of approximately \$8 million for legal accruals in the second quarter of fiscal 2003 which were no longer required due to cases being closed. The increases in selling, general and administrative expenses were partially offset by approximately \$9 million received during the second quarter related to a legal settlement from one of the Company's insurance providers.

Other charges include plant closing costs of \$39 million and \$47 million recorded in the six months of fiscal years 2004 and 2003, respectively. Fiscal 2004 costs were primarily related to closing of the Company's Jackson, Mississippi, Manchester, New Hampshire and Augusta, Maine facilities. The prior year costs were related to the closing of the Company's Stilwell, Oklahoma and Jacksonville, Florida facilities.

Interest expense decreased \$9 million or 6.0%, primarily resulting from an 11.5% decrease in the Company's average indebtedness, offset by \$9 million in charges from the Company's on-going efforts to buy back some of our bonds at attractive prices when available in the market and the early redemption of Tyson de Mexico preferred shares, and increases in the average borrowing rate. In the six months of fiscal 2003, the Company incurred \$6 million in charges from bond buy backs. Excluding the charges noted above, the overall weighted average borrowing rate increased from 7.0% to 7.3%.

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The effective tax rate for the first six months of fiscal 2004 increased to 36.4% compared to 35.5% for the comparable period of fiscal 2003. The estimated ETI amount reduced the 2004 effective tax rate by 1.3% compared to 2.5% for 2003.

Segment Results

Information on segments is as follows (in millions):

| | Six Months Ended | | | | | Average Sales Price Change |
|------------|----------------------------|----------------------------|-----------------|-------------------------------|------------------|-------------------------------------|
| | Sales March 27, 2004 | Sales March 29, 2003 | Sales Change | Sales Percentage Change | Volume Change | |
| Chicken | \$ 3,961 | \$ 3,623 | \$ 338 | 9.3% | 0.7% | 8.6% |
| Beef | 5,830 | 5,505 | 325 | 5.9% | (12.0%) | 20.3% |
| Pork | 1,468 | 1,191 | 277 | 23.3% | 4.9% | 17.5% |
| Prep Foods | 1,372 | 1,302 | 70 | 5.4% | (0.4%) | 5.8% |
| Other | 27 | 26 | 1 | 3.8% | N/A | N/A |
| Total | \$ 12,658 | \$ 11,647 | \$ 1,011 | 8.7% | (3.7%) | 12.9% |

| | Six Months Ended | | | | |
|------------|---|--|--------------------------------------|--|--|
| | Operating Income (Loss) March 27, 2004 | Operating Income March 29, 2003 | Operating Income (Loss) Change | Operating Margin March 27, 2004 | Operating Margin March 29, 2003 |
| Chicken | \$ 305 | \$ 58 | \$ 247 | 7.7% | 1.6% |
| Beef | (31) | 53 | (84) | (0.5%) | 1.0% |
| Pork | 83 | 48 | 35 | 5.7% | 4.0% |
| Prep Foods | 26 | 36 | (10) | 1.9% | 2.8% |
| Other | 41 | 133 | (92) | N/A | N/A |
| Total | \$ 424 | \$ 328 | \$ 96 | 3.3% | 2.8% |

Chicken segment six months sales increased compared to the same period last year as foodservice chicken sales increased 5.9%, retail chicken sales increased 13.1% and international chicken sales increased 15.6%. Operating income for the six months benefited from our on-going commodity risk management hedging activities, which provided approximately \$103 million of benefit to offset an estimated \$43 million of increased grain costs (based on year over year increases in grain markets), higher market prices primarily due to increased leg quarter and breast meat prices and \$47 million of plant closing related charges recorded in fiscal 2003 as compared to \$12 million recorded in fiscal 2004. Chicken segment sales volumes were negatively impacted due to a reduction in international export activity resulting from import restrictions by various countries caused by the avian influenza outbreaks in the United States.

Beef segment six months sales increased compared to the same period last year, as domestic fresh meat beef sales increased 10.0%, international beef sales decreased 17.0% and case-ready beef sales increased 20.1%. Exclusive of BSE related charges recorded in the first quarter of fiscal 2004, operating income decreased \$23 million. Operating income decreased domestically due to lower volumes and live cost increases which were not offset by corresponding increases in cut-out values and drop credits due to the lack of export markets, offset by increased volumes and margins by our Lakeside operation in Canada. The diagnosis of a single case of BSE in a Washington state dairy cow in the first quarter of fiscal 2004

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along with the resulting import restrictions on U.S. beef products imposed by various countries continues to negatively impact the Beef segment's results of operations. No material adjustments were made in the second quarter to the BSE related accruals recorded in the first quarter of fiscal 2004.

Pork segment six months sales increased compared to the same period last year, as domestic fresh meat pork sales increased 19.1%, international pork sales increased 68.3%, case-ready pork sales increased 33.5% and live swine sales decreased 37.6%. The increase in the Pork segment's operating income is due to higher average selling prices and improved drop credits as pork benefited from stronger international markets and production efficiencies due to increased volume year over year, more than offsetting increases in live costs.

Prepared Foods segment six months sales increased compared to the same period last year, as foodservice prepared foods sales increased 11.9%, international prepared foods sales increased 28.4% and retail prepared foods sales decreased 2.8%. Excluding plant closing costs of approximately \$27 million recorded in fiscal 2004, operating income was \$53 million and 3.9% of sales. The increase is primarily due to higher average selling prices and increased volumes, partially offset by increased raw material prices.

Other segment operating income decreased primarily due to settlements of \$122 million received in fiscal 2003 related to vitamin antitrust litigation.

FINANCIAL CONDITION

For the three months ended March 27, 2004, net cash totaling \$284 million was provided by operating activities, primarily resulting from net income and depreciation and amortization. The Company used cash from operations to pay down debt by \$105 million, to fund \$107 million of property, plant and equipment additions, to pay dividends of \$14 million and to repurchase \$29 million of the Company's Class A common stock.

For the six months ended March 27, 2004, net cash totaling \$545 million was provided by operating activities. The increase from the same period last year was primarily due to an increase in net income of \$65 million and a net change in working capital of \$209 million. The change in working capital was primarily due to the decrease in accounts receivable resulting from improved accounts receivable turnover as well as changes in accounts payable caused by timing of cash disbursements. The Company used the cash from operations to pay down debt by \$219 million, to fund \$231 million of property, plant and equipment additions, to pay dividends of \$27 million and to repurchase \$38 million of the Company's Class A common stock. The expenditures for property, plant and equipment were related to acquiring new equipment and upgrading facilities in order to maintain competitive standing and position the Company for future opportunities. Capital spending for fiscal 2004 is expected to be in the range of \$450-\$500 million, which includes spending on plant automation as well as information systems technology improvements.

Working capital was \$1,029 million at March 27, 2004, and \$896 million at September 27, 2003, an increase of \$133 million. The current ratio at March 27, 2004, and September 27, 2003, was 1.5 to 1 and 1.4 to 1, respectively. At March 27, 2004, total debt was 45.0% of total capitalization compared to 47.7% at September 27, 2003.

Total debt at March 27, 2004, was \$3.4 billion, a decrease of \$219 million from September 27, 2003. The Company has unsecured revolving credit facilities totaling \$1 billion that support the Company's commercial paper program. These \$1 billion in facilities consist of \$200 million that expire in June 2004, \$300 million that expire in June 2005 and \$500 million that expire in September 2006. Additionally, the

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Company has a receivables purchase agreement with three co-purchasers to sell up to \$750 million of trade receivables that consists of \$375 million expiring August 2004 and \$375 million expiring in August 2005. At March 27, 2004, and September 27, 2003, there were no amounts drawn under these agreements. Outstanding debt at March 27, 2004, consisted of \$3.2 billion of debt securities and other indebtedness of \$175 million. The Company plans to renew both the revolving credit agreement and the receivables purchase agreement that mature in fiscal 2004, and pay off the notes maturing in fiscal 2004 with amounts available under the Company's short-term borrowings, as well as excess cash.

The revolving credit agreements, senior notes, notes and accounts receivable securitization debt contain various covenants, the more restrictive of which contain a maximum allowed leverage ratio and a minimum required interest coverage ratio. The Company was in compliance with these covenants at March 27, 2004.

The change in goodwill from September 27, 2003, was due to an adjustment of pre-acquisition tax liabilities assumed as part of the TFM acquisition. The Company received formal approval during the first quarter from The Joint Committee on Taxation of the U.S. Congress for issues relating to certain pre-acquisition years. As a result of this approval, the accrual of \$91 million of pre-acquisition tax liability was no longer needed.

The increase in accumulated other comprehensive income from September 27, 2003, was primarily due to \$43 million resulting from the Company's commodity risk management hedging activities. The Company expects to recognize the amounts in other comprehensive income into earnings within the next 12 months.

The Company's foreseeable cash needs for operations and capital expenditures are expected to be met through cash flows provided by operating activities. Additionally, at March 27, 2004, the Company had borrowing capacity of approximately \$1.5 billion consisting of \$716 million available under its \$1 billion unsecured revolving credit agreements and \$750 million under its accounts receivable securitization.

CRITICAL ACCOUNTING ESTIMATES

The preparation of consolidated financial statements requires management 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 considered critical by the Company.

Financial instruments The Company uses derivative financial instruments to manage its exposure to various market risks, including certain livestock, interest rates, grain and feed costs and other commodities used in the normal course of operations. The Company may also hold positions for which hedge accounting, as defined by SFAS 133, is not applied. The related positions must be marked-to-market as of the end of each quarter in which the positions exist. As the commodities underlying the Company's hedges 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 133 could result in volatility in the Company's results of operations.

Contingent liabilities The Company is subject to lawsuits, investigations and other claims related to wage and hour/labor, cattle procurement, securities, environmental, product and other matters, and is required to assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of reserves required, if any, for these contingencies are made after considerable analysis of each individual issue. These reserves may change in

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the future due to changes in the Company's assumptions, the effectiveness of strategies, or other factors beyond the Company's control.

Accrued self insurance Insurance expense for casualty claims and employee-related health care benefits are estimated using historical experience and actuarial estimates. The assumptions used to arrive at periodic expenses are reviewed regularly by management. However, actual expenses could differ from these estimates and could result in adjustments to be recognized.

Impairment of long-lived assets The Company is required to assess potential impairments to its long-lived assets, which is primarily property, plant and equipment. If impairment indicators are present, the Company must measure the fair value of the assets in accordance with SFAS 144 to determine if adjustments are to be recorded.

Goodwill and intangible asset impairment In assessing the recoverability of the Company's goodwill and other intangible assets, management must make assumptions regarding estimated future cash flows and other factors to determine the fair value of the respective assets. If these estimates and related assumptions change in the future, the Company may be required to record impairment charges not previously recorded. The Company assesses its goodwill for impairment at least annually in accordance with Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets".

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

The Company and its representatives may from time to time make written or oral forward-looking statements, including forward-looking statements made in this report, with respect to their current views and estimates of future economic circumstances, industry conditions, company performance and financial results. These forward-looking statements are subject to a number of factors and uncertainties which could cause the Company's actual results and experiences to differ materially from the anticipated results and expectations, expressed in such forward-looking statements. The Company wishes to caution readers not to place undue reliance on any forward-looking statements, which speak only as of the date made. Among the factors that may affect the operating results of the Company are the following: (i) fluctuations in the cost and availability of raw materials, such as live cattle, live swine or feed grain costs; (ii) changes in the availability and relative costs of labor and contract growers; (iii) operating efficiencies of facilities; (iv) market conditions for finished products, including the supply and pricing of alternative proteins; (v) effectiveness of advertising and marketing programs; (vi) the ability of the Company to make effective acquisitions and successfully integrate newly acquired businesses into existing operations; (vii) risks associated with leverage, including cost increases due to rising interest rates or changes in debt ratings or outlook; (viii) risks associated with effectively evaluating derivatives and hedging activities; (ix) changes in regulations and laws (both domestic and foreign), including changes in accounting standards, environmental laws and occupational, health and safety laws; (x) issues related to food safety, including costs resulting from product recalls, regulatory compliance and any related claims or litigation; (xi) adverse results from ongoing litigation; (xii) access to foreign markets together with foreign economic conditions, including currency fluctuations and import/export restrictions; and (xiii) the effect of, or changes in, general economic conditions.

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Item 3. Quantitative and Qualitative Disclosure About Market Risks

MARKET RISK

Market risks relating to the Company's operations result primarily from changes in commodity prices, interest rates and foreign exchange rates as well as credit risk concentrations. To address certain of these risks, the Company enters into various derivative transactions as described below. If a derivative instrument is a hedge, as defined by SFAS 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 will be either offset 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, as defined by SFAS No. 133, as amended, will be immediately recognized in earnings as a component of cost of sales. Instruments that do not meet the criteria for hedge accounting are marked to fair value with unrealized gains or losses reported currently in earnings. Additionally, the Company holds certain positions, primarily in grain and livestock futures and options, for which it does not apply SFAS 133 hedge accounting, but instead marks these positions to fair value through earnings at each reporting date.

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 management may take to mitigate the Company's exposure to changes, nor do they consider the effects that such hypothetical adverse changes may have on overall economic activity. Actual changes in market prices may differ from hypothetical changes.

Commodities Risk The Company is a purchaser of certain commodities, such as corn, soybeans, livestock and natural gas in the course of normal operations. The Company uses commodity futures and options for hedging purposes to reduce the effect of changing prices and as a mechanism to procure the underlying commodity. However, as the commodities underlying the Company's hedges 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 133 could result in volatility in the Company's results of operations. Generally, contract terms of a hedge instrument closely mirror those of the hedged item providing a high degree of risk reduction and correlation. Contracts that are 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 March 27, 2004 and September 27, 2003, respectively, on 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 positions. The underlying commodities hedged have a correlation to price changes of the derivative positions such that the values of the commodities hedged based on differences between commitment prices and market prices and the value of the derivative positions used to hedge these commodity obligations are inversely correlated. The following sensitivity analysis reflects an inverse impact on earnings for changes in the fair value of open positions for livestock and natural gas and a direct impact on earnings for changes in the fair value of open positions for grain.

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(in millions)

Effect of 10% change in fair value

| | (unaudited) March 27, 2004 | September 27, 2003 |
|-------------|----------------------------------|-----------------------|
| Livestock: | | |
| Cattle | \$ 28 | \$ 28 |
| Hogs | 28 | 12 |
| Grain | \$ 77 | \$ 26 |
| Natural Gas | \$ 12 | \$ 11 |

Refer to the Company's market risk disclosures set forth in the 2003 Annual Report filed on Form 10-K, as amended, for a detailed discussion of quantitative and qualitative disclosures about interest rate, foreign currency and concentrations of credit risks. The Company's risk disclosures regarding interest rates, foreign currency and concentration of credit have not changed significantly from the 2003 Annual Report.

Item 4. Controls and Procedures

An evaluation as of the end of the period covered by this quarterly report was carried out under the supervision and with the participation of the Company's management, including the Company's Chairman and Chief Executive Officer and its Executive Vice President and Chief Financial Officer, of the effectiveness of the design and operation of

the Company's "disclosure controls and procedures," which are defined under SEC rules as controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files under the Exchange Act is recorded, processed, summarized and reported within required time periods. Based upon that evaluation, the Company's Chairman and Chief Executive Officer and its Executive Vice President and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective.

The Company's management, including the Company's Chairman and Chief Executive Officer and its Executive Vice President and Chief Financial Officer, has evaluated any changes in the company's internal control over financial reporting that occurred during the quarterly period covered by this report, and has concluded that there was no change during the company's first quarter of its 2004 fiscal year that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Refer to the discussion of certain legal proceedings pending against the Company under Part I, Item 1. Notes to Consolidated Condensed Financial Statements, Note 9: Contingencies, which discussion is incorporated herein by reference. Listed below are certain additional legal proceedings involving the Company and its subsidiaries.

In January 1997, the State of Illinois Attorney General brought suit in the Circuit Court for the 14th Judicial Circuit, Rock Island, Illinois, Chancery Division against TFM alleging that TFM's operations at its Joslin, Illinois, facility are violating the "odor nuisance" statutory provisions enacted in the State of Illinois. TFM has already completed additional improvements at its Joslin facility to further reduce odors from this operation, but denies Illinois EPA's contention that its operations at any time amounted to a "nuisance." The Illinois EPA has alleged a damage claim ranging from approximately \$1,800,000 to \$2,700,000.

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Trial was set for February 7, 2004 but was continued based on settlement discussions between TFM and the State of Illinois. In May 2003, the State of Illinois attempted to add the Company as a defendant in the suit, which the court subsequently denied. In September 2003, the State of Illinois served the Company with a complaint that had been filed in the Circuit Court for the 14th Judicial Circuit, Rock Island, Illinois, Chancery Division alleging substantially the same causes of action against the Company as had been alleged in the action against TFM. A motion to dismiss has been filed as to all claims.

On February 25, 2004 the Indiana Department of Environmental Management ("IDEM") issued a Notice of Violation to the Company's Mexican Original subsidiary facility in Portland, IN for alleged violations of the Clean Air Act permitting regulations. During a meeting held on April 14, 2004, IDEM requested an administrative penalty of approximately \$195,000.

In June 2001, TFM was advised the SEC had commenced a formal investigation related to the restatement of earnings made by TFM in March 2001, including matters relating to certain improprieties in the financial statements of DFG, a wholly-owned subsidiary. The Company has been informed that three former employees of DFG received a so-called "Wells" notice advising them that the SEC had determined to recommend the initiation of an enforcement action and providing them an opportunity to provide their arguments against such an enforcement action. TFM is cooperating with this investigation, and to date the SEC has made no claims against the Company.

In March 2004, the Company was advised the SEC had commenced a formal, non-public investigation primarily involving the disclosure of perquisites provided to certain directors and officers of the Company (including Don Tyson, former Senior Chairman of the Company, and John Tyson, Chairman and CEO of the Company). The Company has been cooperating fully with the SEC, and the Company does not believe the amounts involved are material to the Company's financial position or results of operation. The Company is presently unable to predict what, if any, further action the SEC may take in this matter.

In February 2002, the Company learned that a processing facility owned by Zemco Industries, Inc., a subsidiary of TFM, is the subject of an investigation by the U.S. Attorney's office in Bangor, Maine, into allegedly improper testing and recording practices. The Company acquired Zemco as part of the Company's acquisition of TFM on September 28, 2001. The Company learned in November 2003 that a former Zemco employee at the processing facility has agreed to plead guilty to charges in connection with the investigation. To date there has been no claim by the U.S. Attorney against Zemco, and Zemco will continue to cooperate with the U.S. Attorney's office.

Other Matters The Company has approximately 120,000 team members and at any time has various employment practices matters. In the aggregate, these matters are significant to the Company and the Company devotes significant resources to handling employment issues. Additionally, the Company is subject to other lawsuits, investigations and claims (some of which involve substantial amounts) arising out of the conduct of its business. While the ultimate results of these matters cannot be determined, they are not expected to have a material adverse effect on the Company's consolidated results of operations or financial position.

Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities

The table below provides information regarding purchases by the Company of its Class A Common Stock during the periods indicated.

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| Period | Total Number of Shares Purchased | Average Price Paid per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1) | Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs (1) |
|--------|----------------------------------|------------------------------|--|--|
| | | | | |

| | | | | |
|-------------------------|---------------|-------|-----------|------------|
| December 28 to 31, 2003 | 22,521 | 13.10 | - | 25,000,000 |
| January 1 to 31, 2004 | 222,901 | 13.39 | - | 25,000,000 |
| February 1 to 29, 2004 | 1,459,622 | 15.36 | 1,028,577 | 23,971,423 |
| March 1 to 27, 2004 | 203,922 | 16.83 | - | 23,971,423 |
| Total | 1,908,966 (2) | 15.26 | 1,028,577 | 23,971,423 |

- (1) On February 7, 2003, the Company announced that the board of directors of the Company had approved a plan to repurchase up to 25,000,000 shares of Class A Common Stock from time to time in open market or privately negotiated transactions. The plan has no fixed or scheduled termination date. In the second quarter of fiscal 2004, the Company purchased 1,028,577 shares of Class A Common Stock in a private transaction with Don Tyson, a director and managing partner of the Tyson Limited Partnership, a principal shareholder of the Company. The purchase of those shares from Mr. Tyson, which was approved by the Governance Committee of the board of directors on January 29, 2004, was based on the closing price of the Class A Common Stock on the New York Stock Exchange on the date of such approval.
- (2) The Company purchased 876,690 shares during the period that were not made pursuant to the Company's previously announced stock repurchase plan, but were purchased to fund certain Company obligations under its equity compensation plans. These purchases were made in open market transactions.

Item 3. Defaults Upon Senior Securities

Not Applicable

Item 4. Submission of Matters to a Vote of Security Holders

1. The following directors were elected at the annual meeting of stockholders held February 6, 2004:

| <u>Directors</u> | <u>Votes For</u> | <u>Votes Withheld</u> |
|-------------------|------------------|-----------------------|
| Don Tyson | 1,153,192,434 | 74,468,723 |
| John Tyson | 1,154,845,596 | 72,815,561 |
| Leland E. Tollett | 1,161,076,828 | 66,584,329 |
| Barbara A. Tyson | 1,152,850,100 | 74,811,057 |
| Lloyd V. Hackley | 1,209,059,679 | 18,601,478 |
| Jim Kever | 1,182,170,806 | 45,490,351 |
| David A. Jones | 1,181,364,757 | 46,296,400 |
| Richard L. Bond | 1,156,291,272 | 71,369,885 |
| Jo Ann R. Smith | 1,181,947,796 | 45,713,361 |

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2. Proposal to approve the amendment to the Tyson Foods, Inc. 2000 Stock Incentive Plan, which would increase the number of shares of Class A Common Stock authorized for issuance thereunder by 20,000,000 shares to a total of 40,660,000 shares:

| | |
|-----------------|---------------|
| Votes For | 1,144,509,090 |
| Votes Against | 37,379,373 |
| Votes Abstained | 1,045,381 |
| No Vote | 44,727,314 |

3. Proposal to ratify the amendment and restatement of the Tyson Foods, Inc. Employee Stock Purchase Plan:

| | |
|-----------------|---------------|
| Votes For | 1,121,709,014 |
| Votes Against | 60,026,851 |
| Votes Abstained | 1,197,979 |
| No Vote | 44,727,314 |

4. Proposal to ratify the selection of Ernst & Young LLP, certified public accountants, as the Company's independent auditor for the fiscal year ending October 2, 2004:

| | |
|-----------------|---------------|
| Votes For | 1,175,911,965 |
| Votes Against | 50,691,344 |
| Votes Abstained | 1,057,849 |
| No Vote | 0 |

5. Vote to consider and act upon a shareholder proposal recommending that the Board of Directors take all steps necessary to re-capitalize the Company's equity structure to result in one share, one vote for all outstanding stock of the Company:

| | |
|-----------------|---------------|
| Votes For | 113,373,780 |
| Votes Against | 1,068,125,946 |
| Votes Abstained | 1,434,118 |
| No Vote | 44,727,314 |

6. Vote to consider and act upon a shareholder proposal recommending that the Board of Directors take the necessary steps to require that an independent director who is not nor was formerly the chief executive of the Company serve as chair of the Board of Directors:

| | |
|-----------------|---------------|
| Votes For | 75,961,213 |
| Votes Against | 1,100,395,760 |
| Votes Abstained | 6,576,871 |
| No Vote | 44,727,314 |

Item 5. Other Information

Not Applicable

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Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits:

The exhibit filed with this report is listed in the exhibit index at the end of this Item 6.

(b) Reports on Form 8-K:

On January 26, 2004, the Company furnished a current report on Form 8-K containing its earnings release for the first quarter 2004.

On March 29, 2004, the Company furnished a current report on Form 8-K announcing that it received notice of a formal, non-public investigation by the U.S. Securities and Exchange Commission.

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EXHIBIT INDEX

The following exhibit is filed with this report.

| <u>Exhibit No.</u> | <u>Exhibit Description</u> | <u>Page</u> |
|--------------------|---|-------------|
| 10.1 | Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Plan dated January 23, 2004 | 46 |
| 12.1 | Calculation of Ratio of Earnings to Fixed Charges | 68 |
| 31.1 | Certification of Chief Executive Officer pursuant to SEC Rule 13a-14(a)/15d-14(a), as adopted pursuant to Sections 302 and 404 of the Sarbanes-Oxley Act of 2002. | 69 |
| 31.2 | Certification of Chief Financial Officer pursuant to SEC Rule 13a-14(a)/15d-14(a), as adopted pursuant to Sections 302 and 404 of the Sarbanes-Oxley Act of 2002. | 70 |
| 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. | 71 |
| 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. | 72 |

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SIGNATURES

Pursuant to the requirements 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.

Date: May 10, 2004

/s/ Steven Hankins
Steven Hankins
Executive Vice President and
Chief Financial Officer

Date: May 10, 2004

/s/ Rodney S. Pless
Rodney S. Pless
Senior Vice President, Controller and
Chief Accounting Officer

TYSON FOODS, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT
AND
LIFE INSURANCE PREMIUM PLAN

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SECTION 1
INTRODUCTION

Tyson Foods, Inc. hereby establishes the Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan on January 23, 2004, to become effective as of March 12, 2004 (the "Plan").

The Company 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.

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. 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 as an employee of the Company or any Affiliate from and after January 1, 2004.

(b) Periods of authorized leaves of absence on or after January 1, 2004 from the Company or any Affiliate, 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 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) Any prior Creditable Service under this Plan rendered by an employee who was formerly an Active Participant and who subsequently becomes a new Active Participant pursuant to Plan Section 3.1 shall be disregarded unless otherwise determined 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 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 termination of employment; 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 benefits payable under Section 4.4 to a Participant who terminates employment due to a Disability.
- 2.12 " Early Retirement Allowance " means the SERP benefits payable under Section 4.3 to a Participant who retires prior to attaining Normal Retirement Age.
- 2.13 " 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.
- 2.14 " 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.

- 2.15 " LIP " means the portion of the Plan providing the life insurance premiums payment benefits described in Section 5.
- 2.16 " 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.
- 2.17 " Normal Retirement Age " means age 62.
- 2.18 " Normal Retirement Allowance " means the SERP benefits payable under Section 4.2 to a Participant who retires on or after attaining Normal Retirement Age.
- 2.19 " Participant " means any Active Participant, Inactive Participant or Retired Participant.
 - (a) " Active Participant " means a 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 benefits under Section 4,
 - (ii) the Participant dies or becomes subject to a Disability,
 - (iii) the Participant becomes an Inactive Participant,
 - (iv) the Participant's employment with the Company and its Affiliates is voluntarily terminated prior to becoming entitled to SERP benefits under Section 4, 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 a 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 attained age 62 or the Participant is at least age 55 and the sum of the Participant's age and years of Creditable Service total at least 70 years, the Participant will continue as an Active Participant in the Plan.

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- (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 as an employee of the Company or an Affiliate but who, as a result of a change in status, ceases to be a Contracted Officer or (ii) has his or her Active Participant status terminated solely by reason of Section 2.19(a)(v).
 - (c) " Retired Participant " shall mean a former Active Participant who has retired on or after meeting the requirements for a Normal, Early or Disability Retirement Allowance under Section 4.
- 2.20 " 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.
 - 2.21 " 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 Company.
 - 2.22 " Plan Sponsor " means the Company and each Affiliate that has adopted the Plan with the approval of the Company.
 - 2.23 " SERP " means the portion of the Plan providing the retirement benefits described in Section 4.
 - 2.24 " Vesting Service " means:

(a) The total number of years and completed months of continuous service rendered by a Participant as an employee of the Company or any Affiliate.

(b) Periods of authorized leaves of absence from the Company or any Affiliate, 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.

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.

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SECTION 3 PARTICIPATION

3.1 Commencement of SERP Participation. Each Contracted Officer shall commence participation in the SERP as an Active Participant as of the later of March 12, 2004 or the effective date of the written employment agreement between the Contracted Officer and the Plan Sponsor (or, if applicable, Affiliate).

3.3 Termination of SERP Participation. When a Participant ceases to be an Active Participant (as defined in Section 2.19(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. When a Participant ceases to be an Active Participant (as defined in Section 2.19(a) hereof), he or she shall cease to be a Participant under the LIP portion of the Plan and shall have no rights to LIP benefits thereafter. An Active Participant shall remain a Participant under the LIP portion of the Plan until his or her termination of employment with the Company and its Affiliates, 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.

3.5 Inactive Participant. An Inactive Participant may become a Retired Participant only if he or she returns to the status of an Active Participant and earns a Nonforfeitable right to SERP benefits prior to experiencing a termination of employment with the Plan Sponsor or any Affiliate.

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.

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SECTION 4 SERP BENEFITS

4.1 Nonforfeitable Right to SERP Benefits.

(a) An Active Participant who attains Normal Retirement Age 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 not later than the immediately succeeding policy anniversary date after the date the Participant actually retires.

(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 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 not later than the immediately succeeding policy anniversary date after the date the Participant actually retires.

(c) An Active Participant 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 not later than the immediately succeeding policy anniversary date after the date the Participant terminates employment with the Plan Sponsor (and Affiliates) due to a Disability.

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 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 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 an Active Participant's SERP 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.

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 cease upon reemployment and such allowance shall commence to be paid when the Participant again retires. 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.

SECTION 5 FORMS OF SERP PAYMENT

SERP 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 benefits earned by that Participant.

SECTION 6 LIFE INSURANCE PREMIUM PAYMENTS

6.1 Amount of LIP Benefit. The LIP benefit is an annual amount payable during the period that the Participant is an Active Participant and is equal to the amount of the annual premium due under the policy described in Section 3.2 multiplied by 141%. The face amount of the death benefit under the policy shall depend upon the Participant's band level as a 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.

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.

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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 termination of employment, 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.

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8.8 Accelerated Payment of Benefits. Notwithstanding any other provision of the Plan to the contrary, the Plan Sponsor shall make payments hereunder before such payments are otherwise due if it determines, based on a change in the tax or revenue laws of the United States of America, a published ruling or similar announcement issued by the Internal Revenue Service, a regulation issued by the Secretary of the Treasury or his delegate, a decision by a court of competent jurisdiction involving a Participant, or a closing agreement made under Code Section 7121 that is approved by the Internal Revenue Service and involves a Participant, that a Participant has recognized or will recognize income for federal income tax purposes with respect to amounts that are or will be payable to him under the Plan before they are paid to him.

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 benefits of Participants which had accrued or become Nonforfeitable under this Plan prior to the date such amendment or modification is adopted or becomes effective, whichever is later. 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, assuming the Participant had a Nonforfeitable right to benefits as of such date.

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 benefits of Participants which had accrued or 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, which

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such Participant had accrued through the date of the termination of the Plan. Except as provided in Subsection (b), SERP benefits will be paid in accordance with Section 4.2 or 4.3, as applicable.

(b) Notwithstanding the foregoing, the Company in its discretion may cause each Plan Sponsor to pay a lump sum of Actuarial Equivalent value of any SERP benefits due to Participants at any time following the termination of the Plan.

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 benefits, the Participants affected by any such amendment or modification who have met the age and service requirements to be entitled to a SERP benefit shall be treated with respect to the SERP 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 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 on SERP Benefits. In the event of a Change of Control of the Company, then, any person who is an Active Participant in the SERP at the time of the Change of Control who subsequently either ceases for any reason, other than voluntary termination of employment as defined in Plan Section 9.6 below, to be an Active Participant or becomes eligible for Plan participation at a reduced level, then the Plan shall be deemed terminated at the date the Participant ceases to be an Active Participant or becomes eligible for Plan participation at a reduced level with respect to SERP benefits. Any such person's right and entitlement to SERP benefits shall be determined under the provisions of Section 9.3 but without regard to whether he or she has met the age and service requirements otherwise required to be entitled to a SERP benefit; provided, however that such Participants shall be entitled to continue to accrue benefits after the date of the Change of Control under such terms of the Plan if they are still eligible to continue participation under the Plan.

9.6 Voluntary Termination of Employment. For purposes of Plan Section 9.5, a voluntary termination of employment shall mean any termination initiated by the Participant except a termination 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

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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 addition 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;

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(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

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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

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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

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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.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed as of January 23, 2004.

TYSON FOODS, INC.

By: /s/ Kenneth Kimbro

Title: Senior Vice President, Human Resource

ATTEST:

/s/ R. Read Hudson
Secretary

[CORPORATE SEAL]

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.

Computation of Ratio of Earnings to Fixed Charges

| | Three Months Ended | | Fiscal Years Ending | | | | |
|---|--------------------|------------------|---------------------|---------|---------|---------|---------|
| | Mar. 27, 2004 | Dec. 27, 2003 | 2003 | 2002 | 2001 | 2000 | 1999 |
| Net income for the period | 118,375 | 57,393 | 337,408 | 382,727 | 87,859 | 151,221 | 230,048 |
| Add: Provision for income taxes | 69,029 | 31,607 | 185,493 | 210,237 | 58,362 | 83,520 | 129,355 |
| Add: Minority interest | (29) | 29 | 248 | (97) | 18,750 | (182) | 11,526 |
| Fixed charges | 78,718 | 79,105 | 337,164 | 351,622 | 175,457 | 142,613 | 159,072 |
| Less: Capitalized interest | (520) | (552) | (3,325) | (9,264) | (3,249) | (1,746) | (5,226) |
| Income before taxes on income and fixed charges | 265,573 | 167,582 | 856,988 | 935,225 | 337,179 | 375,426 | 524,775 |
| Fixed Charges: | | | | | | | |
| Interest | 67,724 | 68,365 | 294,175 | 296,983 | 143,718 | 115,261 | 128,035 |
| Capitalized interest | 520 | 552 | 3,325 | 9,264 | 3,249 | 1,746 | 5,226 |
| Rentals at computed interest factor (1) | 8,983 | 8,893 | 34,730 | 37,504 | 25,343 | 22,052 | 21,398 |
| Amortization of debt discount expense | 1,491 | 1,295 | 4,934 | 7,871 | 3,147 | 3,554 | 4,413 |
| Total fixed charges | 78,718 | 79,105 | 337,164 | 351,622 | 175,457 | 142,613 | 159,072 |
| Ratio of earnings to fixed charges | 3.37 | 2.12 | 2.54 | 2.66 | 1.92 | 2.63 | 3.30 |

(1) Amounts represent those portions of rent expense (one-third) that are reasonable approximations of interest costs.

CERTIFICATIONS

I, John Tyson, Chairman and Chief Executive Officer of Tyson Foods, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Tyson Foods, Inc.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly 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)) 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 quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
 - c) disclosed in this quarterly 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: May 10, 2004

/s/ John Tyson

John Tyson

Chairman and Chief Executive Officer

CERTIFICATIONS

I, Steven Hankins, Executive Vice President and Chief Financial Officer of Tyson Foods, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Tyson Foods, Inc.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly 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)) 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 quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
 - c) disclosed in this quarterly 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: May 10, 2004

/s/ Steven Hankins

Steven Hankins

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 Quarterly Report of Tyson Foods, Inc. (the Company) on Form 10-Q for the period ending March 27, 2004 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Steven Hankins, 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/ Steven Hankins
Steven Hankins
Executive Vice President and Chief Financial Officer
May 10, 2004

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 Quarterly Report of Tyson Foods, Inc. (the Company) on Form 10-Q for the period ending March 27, 2004 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, John Tyson, Chairman 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/ John Tyson
John Tyson
Chairman and Chief Executive Officer
May 10, 2004

