DIAMOND OFFSHORE DRILLING INC
Form 4
July 02, 2008

FORM 4

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

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

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0287
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(Print or Type Responses)

1. Name and Address of Reporting Person *
HOFMANN HERBERT C

(Last) (First) (Middle)

677 MADISON AVENUE

(Street)

NEW YORK, NY 10021

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
DIAMOND OFFSHORE DRILLING INC [DO]

3. Date of Earliest Transaction (Month/Day/Year)
07/01/2008

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

__X__ Director _____ 10% Owner
_____ Officer (give title below) _____ Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security	2. Conversion or Exercise	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any	4. Transaction Code	5. Number of Derivative	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)

(Instr. 3)	Price of Derivative Security	(Month/Day/Year)		(Instr. 8)		Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)					
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares
Stock Appreciation Right	$ 140.54	07/01/2008		A		500		07/01/2008	07/01/2018	Common Stock	500

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
HOFMANN HERBERT C 677 MADISON AVENUE NEW YORK, NY 10021	X			

Signatures

/s/ William C. Long Attorney-in-Fact for Herbert C. Hofmann	07/02/2008
**Signature of Reporting Person	Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. /tr>

Debt securities

—

27

86

—

113

Equity securities
6

1

—

—

7

Deferred Compensation Assets
31

149

—

—

180

Total Assets
$
37

$
231

$
86

$
(41
)

$
313

Liabilities:

Commodity Derivatives
$
—

$
102

$
—

$
(100
)

$
2

Foreign Exchange Forward Contracts
—

3

—

—

3

Interest Rate Swap
—

—

Explanation of Responses:

—

—

—

Total Liabilities
$
—

$
105

$
—

$
(100
)

$
5

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(a) Our derivative assets and liabilities are presented in our Consolidated Condensed Balance Sheets on a net basis. We net derivative assets and liabilities, including cash collateral, when a legally enforceable master netting arrangement exists between the counterparty to a derivative contract and us. At December 29, 2012, and September 29, 2012, we had posted with various counterparties $67 million and $59 million, respectively, of cash collateral and held no cash collateral.

The following table provides a reconciliation between the beginning and ending balance of debt securities measured at fair value on a recurring basis in the table above that used significant unobservable inputs (Level 3) (in millions):

	Three Months Ended	
	December 29, 2012	December 31, 2011
Balance at beginning of year	$86	$83
Total realized and unrealized gains (losses):		
Included in earnings	—	1
Included in other comprehensive income (loss)	—	(2)
Purchases	3	6
Issuances	—	—
Settlements	(4)	(4)
Balance at end of period	$85	$84
Total gains (losses) for the three-month period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities still held at end of period	$—	$—

The following methods and assumptions were used to estimate the fair value of each class of financial instrument:

Derivative Assets and Liabilities: Our derivatives, including commodities, foreign exchange forward contracts and an interest rate swap, primarily include exchange-traded and over-the-counter contracts which are further described in Note 9: Derivative Financial Instruments. We record our commodity derivatives at fair value using quoted market prices adjusted for credit and non-performance risk and internal models that use as their basis readily observable market inputs including current and forward commodity market prices. Our foreign exchange forward contracts are recorded at fair value based on quoted prices and spot and forward currency prices adjusted for credit and non-performance risk. Our interest rate swap is recorded at fair value based on quoted LIBOR swap rates adjusted for credit and non-performance risk. We classify these instruments in Level 2 when quoted market prices can be corroborated utilizing observable current and forward commodity market prices on active exchanges, observable market transactions of spot currency rates and forward currency prices or observable benchmark market rates at commonly quoted intervals.

Available for Sale Securities: Our investments in marketable debt securities are classified as available-for-sale and are included in Other Assets in the Consolidated Condensed Balance Sheets. These investments, which are generally long-term in nature with maturities ranging up to 35 years, are reported at fair value based on pricing models and quoted market prices adjusted for credit and non-performance risk. We classify our investments in U.S. government and agency debt securities as Level 2 as fair value is generally estimated using discounted cash flow models that are primarily industry-standard models that consider various assumptions, including time value and yield curve as well as other readily available relevant economic measures. We classify certain corporate, asset-backed and other debt securities as Level 3 as there is limited activity or less observable inputs into valuation models, including current interest rates and estimated prepayment, default and recovery rates on the underlying portfolio or structured investment vehicle. We also classify privately held redeemable preferred stock securities as Level 3 as there is limited activity or less observable inputs into valuation models, including current interest rates and credit worthiness of the underlying private issuer. Significant changes to assumptions or unobservable inputs in the valuation of our Level 3 instruments would not have a significant impact to our consolidated financial statements.

Additionally, we have eight million shares of Syntroleum Corporation common stock and 4.25 million warrants, which expire in June 2015, to purchase an equivalent amount of Syntroleum Corporation common stock at an average price of $2.87. We record the shares and warrants in Other Assets in the Consolidated Condensed Balance Sheets at fair value based on quoted market prices. We classify the shares as Level 1 as the fair value is based on unadjusted quoted prices available in active markets. We classify the warrants as Level 2 as fair value can be corroborated based on observable market data.

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(in millions)	December 29, 2012			September 29, 2012		
	Amortized Cost Basis	Fair Value	Unrealized Gain/(Loss)	Amortized Cost Basis	Fair Value	Unrealized Gain/(Loss)
Available for Sale Securities:						
Debt Securities:						
U.S. Treasury and Agency	$25	$26	$1	$26	$27	$1
Corporate and Asset-Backed (a)	63	65	2	64	66	2
Redeemable Preferred Stock	20	20	—	20	20	—
Equity Securities:						
Common Stock and Warrants	9	3	(6)	9	7	(2)

(a) At both December 29, 2012, and September 29, 2012, the amortized cost basis for Corporate and Asset-Backed debt securities had been reduced by accumulated other than temporary impairments of $2 million.

Unrealized holding gains (losses), net of tax, are excluded from earnings and reported in OCI until the security is settled or sold. On a quarterly basis, we evaluate whether losses related to our available-for-sale securities are temporary in nature. Losses on equity securities are recognized in earnings if the decline in value is judged to be other than temporary. If losses related to our debt securities are determined to be other than temporary, the loss would be recognized in earnings if we intend, or more likely than not will be required, to sell the security prior to recovery. For debt securities in which we have the intent and ability to hold until maturity, losses determined to be other than temporary would remain in OCI, other than expected credit losses which are recognized in earnings. We consider many factors in determining whether a loss is temporary, including the length of time and extent to which the fair value has been below cost, the financial condition and near-term prospects of the issuer and our ability and intent to hold the investment for a period of time sufficient to allow for any anticipated recovery. We recognized no other than temporary impairments in earnings for the three months ending December 29, 2012, and December 31, 2011. No other than temporary losses were deferred in OCI as of December 29, 2012, and September 29, 2012.

Deferred Compensation Assets: We maintain non-qualified deferred compensation plans for certain executives and other highly compensated employees. Investments are maintained within a trust and include money market funds, mutual funds and life insurance policies. The cash surrender value of the life insurance policies is invested primarily in mutual funds. The investments are recorded at fair value based on quoted market prices and are included in Other Assets in the Consolidated Condensed Balance Sheets. We classify the investments which have observable market prices in active markets in Level 1 as these are generally publicly-traded mutual funds. The remaining deferred compensation assets are classified in Level 2, as fair value can be corroborated based on observable market data. Realized and unrealized gains (losses) on deferred compensation are included in earnings.

Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

In addition to assets and liabilities that are recorded at fair value on a recurring basis, we record assets and liabilities at fair value on a nonrecurring basis. Generally, assets are recorded at fair value on a nonrecurring basis as a result of impairment charges. We did not have any significant measurements of assets or liabilities at fair value on a nonrecurring basis subsequent to their initial recognition during the three months ended December 29, 2012, and December 31, 2011.

Other Financial Instruments

Fair value of our debt is principally estimated using Level 2 inputs based on quoted prices for those or similar instruments. Fair value and carrying value for our debt are as follows (in millions):

	December 29, 2012		September 29, 2012	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Total Debt	$2,606	$2,426	$2,596	$2,432

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NOTE 11: OTHER COMPREHENSIVE INCOME

The before and after tax changes in the components of other comprehensive income (loss) are as follows (in millions):

	Three Months Ended					
	December 29, 2012			December 31, 2011		
	Before Tax	Tax	After Tax	Before Tax	Tax	After Tax
Derivatives accounted for as cash flow hedges:						
(Gain) loss reclassified to Cost of Sales	$(4)	$2	$(2)	$6	$(2)	$4
(Gain) loss reclassified to Other Income/Expense	2	(1)	1	(5)	2	(3)
Unrealized gain (loss)	(13)	5	(8)	(3)	1	(2)
Investments:						
Unrealized gain (loss)	(4)	2	(2)	2	(1)	1
Currency translation:						
Translation adjustment	(1)	—	(1)	3	—	3
Postretirement benefits	1	—	1	1	—	1
Total Other Comprehensive Income (Loss)	$(19)	$8	$(11)	$4	$—	$4

NOTE 12: SEGMENT REPORTING

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

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

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

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

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

The results from Dynamic Fuels are included in Other.

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

	Three Months Ended	
	December 29, 2012	December 31, 2011
Sales:		
Chicken	$2,956	$2,762
Beef	3,485	3,467
Pork	1,363	1,475
Prepared Foods	841	861
Other	20	54
Intersegment Sales	(263)	(290)
Total Sales	$8,402	$8,329
Operating Income (Loss):		
Chicken	$107	$32
Beef	46	31
Pork	125	165
Prepared Foods	33	51
Other	(11)	(1)
Total Operating Income	300	278
Total Other (Income) Expense	36	35
Income before Income Taxes	$264	$243

The Beef segment had sales of $43 million and $64 million in the first quarter of fiscal years 2013 and 2012, respectively, from transactions with other operating segments of the Company and Dynamic Fuels. The Pork segment had sales of $220 million and $226 million in the first quarter of fiscal years 2013 and 2012, respectively, from transactions with other operating segments of the Company. The aforementioned sales from intersegment transactions, which were at market prices, were included in the segment sales in the above table.

NOTE 13: COMMITMENTS AND CONTINGENCIES

Commitments

We guarantee obligations of certain outside third parties, which consist primarily of a lease and grower loans, which are substantially collateralized by the underlying assets. Terms of the underlying debt cover periods up to ten years, and the maximum potential amount of future payments as of December 29, 2012, was $71 million. We also maintain operating leases for various types of equipment, some of which contain residual value guarantees for the market value of the underlying leased assets at the end of the term of the lease. The remaining terms of the lease maturities cover periods over the next seven years. The maximum potential amount of the residual value guarantees is $56 million, of which $50 million could be recoverable through various recourse provisions and an additional undeterminable recoverable amount based on the fair value of the underlying leased assets. The likelihood of material payments under these guarantees is not considered probable. At December 29, 2012, and September 29, 2012, no material liabilities for guarantees were recorded.

We have cash flow assistance programs in which certain livestock suppliers participate. Under these programs, we pay an amount for livestock equivalent to a standard cost to grow such livestock during periods of low market sales prices. The amounts of such payments that are in excess of the market sales price are recorded as receivables and accrue interest. Participating suppliers are obligated to repay these receivables balances when market sales prices exceed this standard cost, or upon termination of the agreement. Our maximum obligation associated with these programs is limited to the fair value of each participating livestock supplier's net tangible assets. The potential maximum obligation as of December 29, 2012, was approximately $290 million. The total receivables under these programs were $39 million and $25 million at December 29, 2012, and September 29, 2012, respectively, and are included, net of allowance for uncollectible amounts, in Accounts Receivable at December 29, 2012, and September 29, 2012, in our Consolidated Condensed Balance Sheets. Even though these programs are limited to the net tangible assets of the participating livestock suppliers, we also manage a portion of our credit risk associated with these programs by obtaining security interests in livestock suppliers' assets. After analyzing residual credit risks and general market conditions, we have recorded an allowance for these programs' estimated uncollectible receivables of $13 million and $10 million at December 29, 2012, and September 29, 2012, respectively.

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Contingencies

We are involved in various claims and legal proceedings. We routinely assess the likelihood of adverse judgments or outcomes to those matters, as well as ranges of probable losses, to the extent losses are reasonably estimable. We record accruals for such matters to the extent that we conclude a loss is probable and the financial impact, should an adverse outcome occur, is reasonably estimable. Such accruals are reflected in the Company's consolidated condensed financial statements. In our opinion, we have made appropriate and adequate accruals for these matters and believe the probability of a material loss beyond the amounts accrued to be remote; however, the ultimate liability for these matters is uncertain, and if accruals are not adequate, an adverse outcome could have a material effect on the consolidated condensed financial condition or results of operations. Listed below are certain claims made against the Company and/or our subsidiaries for which the potential exposure is considered material to the Company's consolidated condensed financial statements. We believe we have substantial defenses to the claims made and intend to vigorously defend these matters.

We have pending against us a lawsuit styled DeAsencio v. Tyson Foods, Inc. (E. Dist. Pennsylvania, August 22, 2000) in which the plaintiffs allege that we failed to compensate certain poultry plant employees for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing and walking to and from the changing area, work areas and break areas in violation of the Federal Labor Standards Act (FLSA). They seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees. Plaintiffs appealed a jury verdict and final judgment entered in our favor on June 22, 2006. On September 7, 2007, the U.S. Court of Appeals for the Third Circuit reversed the jury verdict and remanded the case to the District Court for further proceedings. We sought rehearing en banc, which was denied by the Court of Appeals on October 5, 2007. The United States Supreme Court denied our petition for a writ of certiorari on June 9, 2008. The new trial date has not been set.

We have pending eleven separate wage and hour actions involving Tyson Fresh Meats Inc.'s plants located in Garden City and Emporia, Kansas (Garcia, et al. v. Tyson Foods, Inc., Tyson Fresh Meats, Inc., D. Kansas, May 15, 2006), Storm Lake, Iowa (Bouaphakeo (f/k/a Sharp), et al. v. Tyson Foods, Inc., N.D. Iowa, February 6, 2007), Columbus Junction, Iowa (Guyton (f/k/a Robinson), et al. v. Tyson Foods, Inc., d.b.a Tyson Fresh Meats, Inc., S.D. Iowa, September 12, 2007), Joslin, Illinois (Murray, et al. v. Tyson Foods, Inc., C.D. Illinois, January 2, 2008; and DeVoss v. Tyson Foods, Inc. d.b.a. Tyson Fresh Meats, C.D. Illinois, March 2, 2011), Dakota City, Nebraska (Gomez, et al. v. Tyson Foods, Inc., D. Nebraska, January 16, 2008), Madison, Nebraska (Acosta, et al. v Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., D. Nebraska, February 29, 2008), Perry and Waterloo, Iowa (Edwards, et al. v. Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., S.D. Iowa, March 20, 2008); Council Bluffs, Iowa (Maxwell (f/k/a Salazar), et al. v. Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., S.D. Iowa, April 29, 2008); Logansport, Indiana (Carter, et al. v. Tyson Foods, Inc. and Tyson Fresh Meats, Inc., N.D. Indiana, April 29, 2008); and Goodlettsville, Tennessee (Abadeer v. Tyson Foods, Inc., and Tyson Fresh Meats, Inc., M.D. Tennessee, February 6, 2009). The actions allege we failed to pay employees for all hours worked, including overtime compensation for the time it takes to change into protective work uniforms, safety equipment and other sanitary and protective clothing worn by employees, and for walking to and from the changing area, work areas and break areas in violation of the FLSA and analogous state laws. The plaintiffs seek back wages, liquidated damages, pre- and post-judgment interest, attorneys' fees and costs. Each case is proceeding in its jurisdiction.

- After a trial in the Garcia case, which involved the Garden City, Kansas facility, a jury verdict in favor of the plaintiffs was entered on March 17, 2011. Exclusive of pre- and post-judgment interest, attorneys' fees and costs, the jury found violations of federal and state laws for pre- and post-shift work activities and awarded damages in the amount of $503,011. Plaintiffs' counsel filed an application for attorneys' fees and expenses which we contested. On December 7, 2012, the court granted plaintiffs' application and awarded a total of $3,609,723. We filed an appeal with the Tenth Circuit Court of Appeals on December 27, 2012.
- A jury trial was held in the Bouaphakeo case, which involved the Storm Lake, Iowa pork plant and resulted in a jury verdict in favor of the plaintiffs for violations of federal and state laws for pre- and post-shift work activities. The trial court also awarded the plaintiffs liquidated damages, resulting in total damages awarded in the amount of $5,784,758. We have appealed the jury's verdict and trial court's award. The plaintiffs' counsel has also filed an application for attorneys' fees and expenses in the amount of $2,692,145.

- A jury trial was held in the Guyton case, which involved the Columbus Junction, Iowa pork plant, and resulted in a jury verdict in favor of Tyson on April 25, 2012. The plaintiffs filed a post-trial motion, which remains pending in the trial court.
- The Maxwell case has been resolved by the parties, and the parties filed a joint motion for approval of the terms of settlement with the trial court on October 31, 2012, which the trial court has preliminarily approved.
- A bench trial in the Acosta case began January 22, 2013.
- The Gomez case is scheduled for trial on March 18, 2013. The trial court in the Edwards case, which involves the Perry and Waterloo, Iowa facilities, split the case into two trials. The trial involving the Perry facility is scheduled to begin October 7, 2013, and the trial involving the Waterloo facility is scheduled to begin December 9, 2013.

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We have pending one wage and hour action involving our Tyson Prepared Foods plant located in Jefferson, Wisconsin (Weissman, et al. v. Tyson Prepared Foods, Inc., Jefferson County (Wisconsin) Circuit Court, October 20, 2010). The plaintiffs allege that employees should be paid for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing and the associated time it takes to walk to and from their workstations post-donning and pre-doffing of protective and sanitary clothing. Six named plaintiffs seek to act as state law class representatives on behalf of all current and former employees who were allegedly not paid for time worked and seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees and costs. On May 16, 2011, the plaintiffs filed a motion to certify a state law class of all hourly employees who have worked at the Jefferson plant from October 20, 2008, to the present. We have filed motions for summary judgment seeking dismissal of the claims, or, in the alternative, to limit the claims made for non-compensable clothes changing activities. The court granted summary judgment in favor of Tyson on August 31, 2012, and the plaintiffs filed a notice of appeal on October 5, 2012.

On June 19, 2005, the Attorney General and the Secretary of the Environment of the State of Oklahoma filed a complaint in the U.S. District Court for the Northern District of Oklahoma against us, three of our subsidiaries and six other poultry integrators. The complaint, which was subsequently amended, asserts a number of state and federal causes of action including, but not limited to, counts under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), and state-law public nuisance theories. The amended complaint asserts that defendants and certain contract growers who are not named in the amended complaint polluted the surface waters, groundwater and associated drinking water supplies of the Illinois River Watershed (IRW) through the land application of poultry litter. Oklahoma asserts that this alleged pollution has also caused extensive injury to the environment (including soils and sediments) of the IRW and that the defendants have been unjustly enriched. Oklahoma's claims cover the entire IRW, which encompasses more than one million acres of land and the natural resources (including lakes and waterways) contained therein. Oklahoma seeks wide-ranging relief, including injunctive relief, compensatory damages in excess of $800 million, an unspecified amount in punitive damages and attorneys' fees. We and the other defendants have denied liability, asserted various defenses, and filed a third-party complaint that asserts claims against other persons and entities whose activities may have contributed to the pollution alleged in the amended complaint. The district court has stayed proceedings on the third party complaint pending resolution of Oklahoma's claims against the defendants. On October 31, 2008, the defendants filed a motion to dismiss for failure to join the Cherokee Nation as a required party or, in the alternative, for judgment as a matter of law based on the plaintiffs' lack of standing. This motion was granted in part and denied in part on July 22, 2009. In its ruling, the district court dismissed Oklahoma's claims for cost recovery and for natural resources damages under CERCLA and for unjust enrichment under Oklahoma common law. This ruling also narrowed the scope of Oklahoma's remaining claims by dismissing all damage claims under its causes of action for Oklahoma common law nuisance, federal common law nuisance, and Oklahoma common law trespass, leaving only its claims for injunctive relief for trial. On August 18, 2009, the Court granted partial summary judgment in favor of the defendants on Oklahoma's claims for violations of the Oklahoma Registered Poultry Feeding Operations Act. Oklahoma later voluntarily dismissed the remainder of this claim. On September 2, 2009, the Cherokee Nation filed a motion to intervene in the lawsuit. Its motion to intervene was denied on September 15, 2009, and the Cherokee Nation filed a notice of appeal of that ruling in the Tenth Circuit Court of Appeals on September 17, 2009. A non-jury trial of the case began on September 24, 2009. At the close of Oklahoma's case-in-chief, the Court granted the defendants' motions to dismiss claims based on RCRA, nuisance per se, and health risks related to bacteria. The defense rested its case on January 13, 2010, and closing arguments were held on February 11, 2010. On September 21, 2010, the Court of Appeals affirmed the district court's denial of the Cherokee Nation's motion to intervene. On October 6, 2010, the Cherokee Nation and the State of Oklahoma filed a petition for rehearing or en banc review seeking reconsideration of this ruling. The Court of Appeals denied this petition. The district court has not yet rendered its decision from the trial, which ended in February 2010.

On May 8, 2008, a lawsuit was filed against the Company and two of our employees in the District Court of McCurtain County, Oklahoma styled Armstrong, et al. v. Tyson Foods, Inc., et al. (the Armstrong Case). The lawsuit was brought by a group of 52 poultry growers who allege that certain of our live production practices in Oklahoma constitute fraudulent inducement, fraud, unjust enrichment, negligence, gross negligence, unconscionability, violations of the Oklahoma Business Sales Act, Deceptive Trade Practice violations, violations of the Consumer Protection Act, and conversion, as well as other theories of recovery. The plaintiffs sought damages in an unspecified amount. On October 30, 2009, 20 additional growers represented by the same attorney filed a lawsuit against us in the same court asserting the same or similar claims, which is styled Clardy, et al. v. Tyson Foods, Inc., et al. (the Clardy Case). In both of these cases we have denied all allegations of wrongdoing. In June 2009, the plaintiffs in the Armstrong case requested an expedited trial date for a smaller group of plaintiffs they claimed were facing imminent financial peril. The Court ultimately severed a group of 10 plaintiffs from the Armstrong Case, and a trial began on March 15, 2010. On April 1, 2010, the jury returned a verdict against us and one of our employees, and on April 2, 2010, the Court entered a judgment in the amount of $8,655,735, which included punitive damages. Subsequent to the trial, the presiding judge disqualified from the cases and the Oklahoma Supreme Court appointed a new judge to the cases. Following this appointment, the trial court granted our motions for change of venue and to stay all future trials of plaintiffs in the Armstrong Case and the Clardy Case pending the outcome of our appeal of the initial Armstrong Case verdict. The trial court took under advisement the sizes of groupings of plaintiffs in future trials in response to our motion to sever the plaintiffs' claims into individual cases. We appealed the initial Armstrong Case verdict to the Oklahoma Supreme Court based on numerous irregularities and rulings during the trial, and the Oklahoma Supreme Court reversed the verdict and remanded the case back to the trial court. At this time, new trial dates in the Armstrong Case have not been scheduled, nor have trial dates for the Clardy Case.

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In late 2010, the United States Environmental Protection Agency (EPA) Region 7 began a Clean Air Act investigation of the Company related to operation and maintenance of ammonia refrigeration equipment at multiple facilities. The EPA subsequently referred the matter, which involves allegations of potential non-compliance with the Clean Air Act's Risk Management Plan requirements at 25 Tyson facilities in Kansas, Missouri, Iowa and Nebraska, to the United States Department of Justice (DOJ). The EPA and DOJ have indicated they will seek monetary penalties and injunctive relief requiring equipment and infrastructure changes at several facilities. Currently we are engaged in settlement discussions with the EPA and DOJ.

NOTE 14: CONDENSED CONSOLIDATING FINANCIAL STATEMENTS

TFM Parent, our wholly-owned subsidiary, has fully and unconditionally guaranteed the 2016 Notes. Additionally, TFM Parent has fully and unconditionally guaranteed the 2022 Notes until such date TFM Parent has been released of its guarantee of both (i) Tyson's $1.0 billion revolving credit facility and (ii) the 2016 Notes, at which time TFM Parent's guarantee of the 2022 Notes is permanently released. The following financial information presents condensed consolidating financial statements, which include Tyson Foods, Inc. (TFI Parent); TFM Parent; the Non-Guarantors Subsidiaries (Non-Guarantors) on a combined basis; the elimination entries necessary to consolidate TFI Parent, TFM Parent and the Non-Guarantors; and Tyson Foods, Inc. on a consolidated basis, and is provided as an alternative to providing separate financial statements for the guarantor. This presentation has been revised from the financial presentation disclosed in periods prior to September 29, 2012, to reflect changes in the subsidiary guarantees associated with the permanent release of certain subsidiary guarantors upon the retirement of the 10.50% Senior Notes due 2014.

Condensed Consolidating Statement of Income and Comprehensive Income for the three months ended December 29, 2012 — in millions

	TFI Parent	TFM Parent	Non-Guarantors	Eliminations	Total
Sales	$75	$4,750	$3,904	$(327)	$8,402
Cost of Sales	16	4,538	3,638	(327)	7,865
Gross Profit	59	212	266	—	537
Selling, General and Administrative	20	52	165	—	237
Operating Income	39	160	101	—	300
Other (Income) Expense:					
Interest expense, net	8	16	12	—	36
Other, net	—	—	—	—	—
Equity in net earnings of subsidiaries	(149)	(24)	—	173	—
Total Other (Income) Expense	(141)	(8)	12	173	36
Income (Loss) before Income Taxes	180	168	89	(173)	264
Income Tax Expense	7	51	38	—	96
Net Income (Loss)	173	117	51	(173)	168
Less: Net Loss Attributable to Noncontrolling Interest	—	—	(5)	—	(5)
Net Income (Loss) Attributable to Tyson	173	117	56	(173)	173
Comprehensive Income	157	121	50	(171)	157
Less: Comprehensive Loss Attributable to Noncontrolling Interest	—	—	(5)	—	(5)
Comprehensive Income Attributable to Tyson	$157	$121	$55	$(171)	$162

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Condensed Consolidating Statement of Income and Comprehensive Income for the three months ended December 31, 2011 — in millions

	TFI Parent	TFM Parent	Non-Guarantors	Eliminations	Total
Sales	$52	$4,841	$3,761	$(325)	$8,329
Cost of Sales	8	4,642	3,511	(325)	7,836
Gross Profit	44	199	250	—	493
Selling, General and Administrative	12	50	153	—	215
Operating Income	32	149	97	—	278
Other (Income) Expense:					
Interest expense, net	(13)	32	28	—	47
Other, net	1	—	(13)	—	(12)
Equity in net earnings of subsidiaries	(127)	(26)	—	153	—
Total Other (Income) Expense	(139)	6	15	153	35
Income (Loss) before Income Taxes	171	143	82	(153)	243
Income Tax (Benefit) Expense	15	40	32	—	87
Net Income (Loss)	156	103	50	(153)	156
Less: Net Loss Attributable to Noncontrolling Interest	—	—	—	—	—
Net Income (Loss) Attributable to Tyson	156	103	50	(153)	156
Comprehensive Income	160	100	51	(151)	160
Less: Comprehensive Loss Attributable to Noncontrolling Interest	—	—	—	—	—
Comprehensive Income Attributable to Tyson	$160	$100	$51	$(151)	$160

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Condensed Consolidating Balance Sheet as of December 29, 2012 in millions

	TFI Parent	TFM Parent	Non-Guarantors	Eliminations	Total
Assets					
Current Assets:					
Cash and cash equivalents	$—	$20	$931	$—	$951
Accounts receivable, net	1	514	850	—	1,365
Inventories	1	1,005	1,926	—	2,932
Other current assets	115	63	128	(167)	139
Total Current Assets	117	1,602	3,835	(167)	5,387
Net Property, Plant and Equipment	32	871	3,140	—	4,043
Goodwill	—	881	1,010	—	1,891
Intangible Assets	—	25	101	—	126
Other Assets	1,233	147	231	(1,184)	427
Investment in Subsidiaries	11,525	2,075	—	(13,600)	—
Total Assets	$12,907	$5,601	$8,317	$(14,951)	$11,874
Liabilities and Shareholders' Equity					
Current Liabilities:					
Current debt	$446	$—	$145	$(72)	$519
Accounts payable	28	697	710	—	1,435
Other current liabilities	4,460	166	755	(4,489)	892
Total Current Liabilities	4,934	863	1,610	(4,561)	2,846
Long-Term Debt	1,769	809	458	(1,129)	1,907
Deferred Income Taxes	—	130	420	(14)	536
Other Liabilities	170	133	265	(41)	527
Total Tyson Shareholders' Equity	6,034	3,666	5,540	(9,206)	6,034
Noncontrolling Interest	—	—	24	—	24
Total Shareholders' Equity	6,034	3,666	5,564	(9,206)	6,058
Total Liabilities and Shareholders' Equity	$12,907	$5,601	$8,317	$(14,951)	$11,874

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Condensed Consolidating Balance Sheet as of September 29, 2012 in millions

	TFI Parent	TFM Parent	Non-Guarantors	Eliminations	Total
Assets					
Current Assets:					
Cash and cash equivalents	$1	$9	$1,061	$—	$1,071
Accounts receivable, net	1	499	878	—	1,378
Inventories	—	950	1,859	—	2,809
Other current assets	139	100	90	(184)	145
Total Current Assets	141	1,558	3,888	(184)	5,403
Net Property, Plant and Equipment	31	873	3,118	—	4,022
Goodwill	—	881	1,010	—	1,891
Intangible Assets	—	26	103	—	129
Other Assets	1,257	151	251	(1,208)	451
Investment in Subsidiaries	11,849	2,005	—	(13,854)	—
Total Assets	$13,278	$5,494	$8,370	$(15,246)	$11,896
Liabilities and Shareholders' Equity					
Current Liabilities:					
Current debt	$439	$—	$167	$(91)	$515
Accounts payable	10	558	804	—	1,372
Other current liabilities	4,887	144	766	(4,854)	943
Total Current Liabilities	5,336	702	1,737	(4,945)	2,830
Long-Term Debt	1,774	809	486	(1,152)	1,917
Deferred Income Taxes	—	135	432	(9)	558
Other Liabilities	156	146	294	(47)	549
Total Tyson Shareholders' Equity	6,012	3,702	5,391	(9,093)	6,012
Noncontrolling Interest	—	—	30	—	30
Total Shareholders' Equity	6,012	3,702	5,421	(9,093)	6,042
Total Liabilities and Shareholders' Equity	$13,278	$5,494	$8,370	$(15,246)	$11,896

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Condensed Consolidating Statement of Cash Flows for the three months ended December 29, 2012 in millions

	TFI Parent	TFM Parent	Non-Guarantors	Eliminations	Total
Cash Provided by (Used for) Operating Activities	$21	$234	$(65)	$—	$190
Cash Flows from Investing Activities:					
Additions to property, plant and equipment	(2)	(24)	(131)	—	(157)
Proceeds from marketable securities, net	—	—	1	—	1
Other, net	—	—	4	—	4
Cash Provided by (Used for) Investing Activities	(2)	(24)	(126)	—	(152)
Cash Flows from Financing Activities:					
Net change in debt	—	—	(11)	—	(11)
Purchases of Tyson Class A common stock	(115)	—	—	—	(115)
Dividends	(53)	—	—	—	(53)
Other, net	22	—	(1)	—	21
Net change in intercompany balances	126	(199)	73	—	—
Cash Provided by (Used for) Financing Activities	(20)	(199)	61	—	(158)
Effect of Exchange Rate Change on Cash	—	—	—	—	—
Increase (Decrease) in Cash and Cash Equivalents	(1)	11	(130)	—	(120)
Cash and Cash Equivalents at Beginning of Year	1	9	1,061	—	1,071
Cash and Cash Equivalents at End of Period	$—	$20	$931	$—	$951

Condensed Consolidating Statement of Cash Flows for the three months ended December 31, 2011 in millions

	TFI Parent	TFM Parent	Non-Guarantors	Eliminations	Total
Cash Provided by (Used for) Operating Activities	$59	$332	$(53)	$—	$338
Cash Flows from Investing Activities:					
Additions to property, plant and equipment	—	(25)	(157)	—	(182)
Proceeds from marketable securities, net	—	2	1	—	3
Other, net	2	2	(1)	—	3
Cash Provided by (Used for) Investing Activities	2	(21)	(157)	—	(176)
Cash Flows from Financing Activities:					
Net change in debt	(1)	—	21	—	20
Purchases of Tyson Class A common stock	(50)	—	—	—	(50)
Dividends	(15)	—	—	—	(15)
Other, net	22	—	—	—	22
Net change in intercompany balances	(18)	(310)	328	—	—
Cash Provided by (Used for) Financing Activities	(62)	(310)	349	—	(23)
Effect of Exchange Rate Change on Cash	—	—	2	—	2
	(1)	1	141	—	141

Increase (Decrease) in Cash and Cash Equivalents					
Cash and Cash Equivalents at Beginning of Year	1	1	714	—	716
Cash and Cash Equivalents at End of Period	$—	$2	$855	$—	$857

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

RESULTS OF OPERATIONS

Description of the Company

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

Overview

- General – As a result of continued focus on internal performance and balancing our supply with customer demand, operating results remained strong in the first quarter of fiscal 2013, despite increased input costs and challenging market conditions across most of our operating segments.
- We continued to execute our strategy of accelerating growth in international poultry and domestic value-added products, innovating products, processes and analytics and cultivating our team members.
- We also maintained focus on maximizing our margins through margin management and operational efficiency improvements. Margin management improvements occurred in the areas of mix, export sales, price optimization and value-added products initiatives. The operational efficiencies occurred in areas of yields, chicken live performance, cost reduction and labor management.
- Market environment – Our Chicken segment experienced increased feed costs but was able to offset the impact with operational, mix and price improvements. Despite reduced domestic demand for beef products and increased costs for fed cattle, our Beef segment remained profitable, primarily as a result of balancing our supply with customer demand. Pork segment results remained strong due to greater availability of live hogs which drove down livestock costs. Our Prepared Foods segment was challenged by product mix and additional costs incurred as we invested in our lunchmeat business.
- Our total operating margins were 3.6% in the first quarter of fiscal 2013. The following is a summary of operating margins by segment:
  - Chicken – 3.6%
  - Beef – 1.3%
  - Pork – 9.2%
  - Prepared Foods – 3.9%
- Debt and Liquidity – During the first quarter of fiscal 2013, we generated $190 million of operating cash flows. Additionally, we repurchased, as part of our share repurchase program, 5.1 million shares of our stock for $100 million. At December 29, 2012, we had approximately $1.9 billion of liquidity, which includes availability under our credit facility and $951 million of cash and cash equivalents.

in millions, except per share data	Three Months Ended	
	December 29, 2012	December 31, 2011
Net income attributable to Tyson	$173	$156
Net income attributable to Tyson – per diluted share	0.48	0.42

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Summary of Results

Sales

in millions	Three Months Ended	
	December 29, 2012	December 31, 2011
Sales	$8,402	$8,329
Change in sales volume	(3.3)%	
Change in average sales price	4.7%	
Sales growth	0.9%	

First quarter – Fiscal 2013 vs Fiscal 2012

- Average Sales Price – Sales were positively impacted by higher average sales prices, which accounted for an increase of $465 million. The Chicken and Beef segments experienced increased average sales prices, largely due to continued tight domestic availability of protein and increased live and raw material costs, partially offset by decreases in average sales prices in the Pork and Prepared Foods segments which were driven by lower live and raw material costs.
- Sales Volume – Sales were negatively impacted by lower sales volume, which accounted for a decrease of $392 million. All segments, with the exception of the Prepared Foods segment, had a decrease in sales volume, with the majority of the decrease in the Beef segment.

Cost of Sales

in millions	Three Months Ended	
	December 29, 2012	December 31, 2011
Cost of sales	$7,865	$7,836
Gross margin	$537	$493
Cost of sales as a percentage of sales	93.6%	94.1%

First quarter – Fiscal 2013 vs Fiscal 2012

- Cost of sales increased $29 million. Higher input cost per pound increased cost of sales $299 million, while lower sales volume decreased cost of sales $270 million.
- The $299 million impact of higher input cost per pound was primarily driven by:
- Increase in live cattle costs of $153 million, partially offset by a decrease in live hog costs of $62 million.
- Increase in feed costs of $170 million in our Chicken segment.
- The $270 million impact of lower sales volume was driven by decreases in sales volume in our Chicken, Beef and Pork segments, partially offset by an increase in sales volume in our Prepared Foods segment.

Selling, General and Administrative

in millions	Three Months Ended	
	December 29, 2012	December 31, 2011
Selling, general and administrative expense	$237	$215
As a percentage of sales	2.8%	2.6%

First quarter – Fiscal 2013 vs Fiscal 2012

- Increase of $11 million related to employee costs including payroll and stock-based and incentive-based compensation.
- Increase of $6 million related to reduced investment returns on deferred compensation plans.
- Increase of $5 million primarily related to advertising, professional fees and sales promotions.

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Interest Expense

in millions	Three Months Ended	
	December 29, 2012	December 31, 2011
Cash interest expense	$30	$40
Non-cash interest expense	7	9
Total Interest Expense	$37	$49

First quarter – Fiscal 2013 vs Fiscal 2012

- Cash interest expense includes interest expense related to the coupon rates for senior notes and commitment/letter of credit fees incurred on our revolving credit facilities. The decrease is due to lower average coupon rates compared to fiscal 2012.
- Non-cash interest expense primarily includes interest related to the amortization of debt issuance costs and discounts/premiums on note issuances.

Other (Income) Expense, net

in millions	Three Months Ended	
	December 29, 2012	December 31, 2011
	$—	$(12)

First quarter of fiscal 2013

- Includes $3 million of equity earnings in joint ventures offset by $3 million in net foreign currency exchange losses.

First quarter of fiscal 2012

- Includes $6 million of equity earnings in joint ventures and $5 million in net foreign currency exchange gains.

Effective Tax Rate

	Three Months Ended	
	December 29, 2012	December 31, 2011
	36.3%	35.8%

First quarter of fiscal 2013 – The effective tax rate was impacted by:

- state income taxes;
- the domestic production deduction; and
- losses in foreign jurisdictions and related valuation allowances.

First quarter of fiscal 2012 – The effective tax rate was impacted by:

- the domestic production deduction; and
- state income taxes.

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Segment Results

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

in millions	Sales	
	Three Months Ended	
	December 29, 2012	December 31, 2011
Chicken	$2,956	$2,762
Beef	3,485	3,467
Pork	1,363	1,475
Prepared Foods	841	861
Other	20	54
Intersegment Sales	(263)	(290)
Total	$8,402	$8,329

in millions	Operating Income (Loss)	
	Three Months Ended	
	December 29, 2012	December 31, 2011
Chicken	$107	$32
Beef	46	31
Pork	125	165
Prepared Foods	33	51
Other	(11)	(1)
Total	$300	$278

Chicken Segment Results

in millions	Three Months Ended		
	December 29, 2012	December 31, 2011	Change
Sales	$2,956	$2,762	$194
Sales Volume Change			(1.1)%
Average Sales Price Change			8.2%
Operating Income	$107	$32	$75
Operating Margin	3.6%	1.2%	

First quarter – Fiscal 2013 vs Fiscal 2012

- Sales and Operating Income –
- Sales Volume – Despite increased domestic and international production, total sales volumes decreased in the first quarter of fiscal 2013 due to reduced open-market meat purchases, planned inventory build to meet forecasted customer demand and mix of rendered product sales.
- Average Sales Price – The increase in average sales price is primarily due to mix changes and price increases associated with increased input costs. Since many of our sales contracts are formula based or shorter-term in nature, we were able to offset rising input costs through improved pricing and mix.
- Operating Income – Operating income was positively impacted by increases in average sales price, improved live performance and operational improvements. These increases were partially offset by increased feed costs of $170 million.

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Explanation of Responses:

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Beef Segment Results

in millions	Three Months Ended		
	December 29, 2012	December 31, 2011	Change
Sales	$3,485	$3,467	$18
Sales Volume Change			(10.0)%
Average Sales Price Change			11.7 %
Operating Income	$46	$31	$15
Operating Margin	1.3 %	0.9 %	

First quarter – Fiscal 2013 vs Fiscal 2012

- Sales and Operating Income –
- Fed cattle supplies decreased which drove up average sales price and livestock cost. Sales volumes decreased due to a reduction in live cattle processed as a result of soft domestic demand for beef products and outside tallow purchases. Operating income increased in the first quarter of fiscal 2013 as the result of balancing our supply with customer demand partially offset by increased operating costs from reduced production.

Pork Segment Results

in millions	Three Months Ended		
	December 29, 2012	December 31, 2011	Change
Sales	$1,363	$1,475	$(112)
Sales Volume Change			(2.2)%
Average Sales Price Change			(5.5)%
Operating Income	$125	$165	$(40)
Operating Margin	9.2 %	11.2 %	

First quarter – Fiscal 2013 vs Fiscal 2012

- Sales and Operating Income –
- Live hog supplies increased which drove down average sales price and livestock cost. Sales volumes decreased as a result of balancing our supply with customer demand. While reduced compared to prior year, operating income remained strong in the first quarter of fiscal 2013 despite brief periods of imbalance in industry supply and customer demand.

Prepared Foods Segment Results

in millions	Three Months Ended		
	December 29, 2012	December 31, 2011	Change
Sales	$841	$861	$(20)
Sa			