

CONAGRA FOODS INC /DE/
Form S-8
September 25, 2009

As Filed with the Securities and Exchange Commission on September 25, 2009.

Registration No. 333-_____

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

ConAgra Foods, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
**(State or Other Jurisdiction
of Incorporation or Organization)**

47-0248710
**(I.R.S. Employer
Identification No.)**

One ConAgra Drive
Omaha, Nebraska
(Address of Principal Executive Offices)

68102-5001
(Zip Code)

CONAGRA FOODS, INC. DIRECTORS DEFERRED COMPENSATION PLAN
(Full Title of the Plan)

Colleen Batcheler
Senior Vice President, General Counsel and Corporate Secretary
ConAgra Foods, Inc.
One ConAgra Drive
Omaha, Nebraska 68102-5001
402-240-4000

With a copy to:
Lyn Rhoten
Senior Counsel
ConAgra Foods, Inc.
One ConAgra Drive
Omaha, Nebraska 68102-5001
402-240-4000

(Name, Address and Telephone Number of agent for service)

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

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

Smaller reporting
company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(2)	Proposed maximum offering price per share	Proposed maximum aggregate offering price (2)	Amount of registration fee
Deferred Compensation Obligations (1)	\$ 3,000,000	100%	\$ 3,000,000	\$ 168

1. The Deferred Compensation Obligations being registered are general unsecured obligations of ConAgra Foods, Inc. (the Company or Registrant) to pay deferred compensation in the future to participating members of the Board of Directors of the Company in accordance with the ConAgra Foods, Inc. Directors Deferred Compensation Plan.
2. Estimated solely for the purpose of calculating the registration fee pursuant to paragraph (o) of Rule 457 of the General Rules and Regulations under the Securities Act of 1933, as amended (the Securities Act).

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

As permitted by the rules of the Securities and Exchange Commission (the Commission), the information specified in Part I has been omitted from this Registration Statement.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Company hereby incorporates by reference in this Registration Statement the following documents previously filed with the Commission:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended May 31, 2009; and
- (b) The Company's Current Reports on Form 8-K filed with the Commission on June 18, 2009, July 20, 2009 and August 5, 2009.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the Registration Statement and to be a part thereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statements. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

The ConAgra Foods, Inc. Directors' Deferred Compensation Plan (the Plan) provides members of the Board of Directors (Directors) of the Company with the opportunity to defer all or a portion of their fees earned during a year. The obligations of the Company under the Plan (the Deferred Compensation Obligations) are general unsecured obligations of the Company to pay deferred compensation in the future to participating Directors (Participants) in accordance with the terms of the Plan from the general assets of the Company and will rank pari passu with other unsecured and unsubordinated indebtedness of the Company from time to time outstanding. A Director may elect to defer fees that would otherwise have been paid in cash (Cash Fees) to (i) an interest bearing account; (ii) a Company Common Stock Account (the Stock Account), or (iii) to any other investments that track investments that are permitted by the Company's Employee Benefits Investment Committee (the Other Investments Account). Deferrals of fees that would otherwise have been paid in shares of the Company's Common Stock (Stock Fees) are credited to the Stock Account. All accounts are maintained as an accounting record of the Company's obligation under the Plan. Amounts credited to the Stock Account are a book entry by the Company payable in shares of the Company's Common Stock. The Deferred Compensation Obligations include compensation deferred by Participants and investment earnings (or losses) thereon. Amounts credited to a Participant's interest-bearing account or Other Investments

Account will be paid in cash. The aggregate number of shares of the Company's Common Stock credited to a Participant's Stock Account will be paid in shares of the Company's Common Stock, which have been separately registered pursuant to a Registration Statement on Form S-8 related to the ConAgra Foods 2009 Stock Plan filed with the Commission on September 25, 2009.

The Company maintains bookkeeping accounts to which Participants' deferrals are credited. Deferred compensation (adjusted for deemed investment returns) is generally distributed when the Director ceases to be a Director. Participants may also request an early distribution of deferred compensation in the event of an unforeseeable emergency.

Participants may elect that their Plan benefits be distributed in a lump sum or in annual or semi-annual installments over a period of up to ten years.

No amount payable or deliverable under the Plan will be subject to anticipation, assignment, transfer, sale, mortgage, pledge or hypothecation. The plan administrator will not recognize any attempt by a third party to attach, garnish or levy upon any benefit under the Plan except as may be required by law. There is no trading market for the Deferred Compensation Obligations.

The Deferred Compensation Obligations are not subject to redemption, in whole or in part, prior to the individual payment dates specified by each Participant, at the option of the Company or through operation of a mandatory or optional sinking fund or analogous provision, except in the case of the Participant's death. However, the Company reserves the right to amend or terminate the Plan at any time, except that no such amendment or termination shall affect the obligation or schedule of the Company to pay to the Participants the amounts accrued or credited to their accounts up to December 31st of the year in which the amendment or termination is made or cause the Plan to violate Section 409A of the Internal Revenue Code.

The total amount of the Deferred Compensation Obligations is not determinable because the amount will vary depending upon the level of participation by Directors and the amounts of their fees. The duration of the Plan is indefinite.

The Deferred Compensation Obligations are not convertible into another security of the Company. The Deferred Compensation Obligations will not have the benefit of a negative pledge or any other affirmative or negative covenant on the part of the Company. Each Participant will be responsible for acting independently with respect to, among other things, the giving of notices, responding to any requests for consents, waivers or amendments pertaining to the Deferred Compensation Obligations, enforcing covenants and taking action upon a default by the Company.

The foregoing description of the Deferred Compensation Obligations is qualified in its entirety by reference to the full text of the Plan document a copy of which is incorporated by reference as Exhibit 4.3 to this Registration Statement.

Item 5. Interests of Named Experts and Counsel.

The legality of the Deferred Compensation Obligations being offered by this Registration Statement has been passed upon for the Company by Colleen Batcheler, Senior Vice President, General Counsel and Corporate Secretary. As of September 24, 2009, Ms. Batcheler held 2,742 shares of Common Stock and had been granted options to purchase another 208,000 shares of Common Stock and share equivalent units representing 10,600 shares of Common Stock.

Item 6. Indemnification of Directors and Officers.

Pursuant to Article V of the Certificate of Incorporation of the Company, the Company shall, to the

extent required, and may, to the extent permitted, by Section 102 and 145 of the General Corporation Law of the State of Delaware, as amended from time to time, indemnify and reimburse all persons whom it may indemnify and reimburse pursuant thereto. No director shall be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. A director shall continue to be liable for (1) any breach of a director's duty of loyalty to the Company or its stockholders; (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (3) paying a dividend or approving a stock repurchase which would violate Section 174 of the General Corporation Law of the State of Delaware; or (4) any transaction from which the director derived an improper personal benefit.

The by-laws of the Company provide for indemnification of Company officers and directors against all expenses, liability or losses reasonably incurred or suffered by the officer or director, including liability arising under the Securities Act of 1933, to the extent legally permissible under Section 145 of the General Corporation Law of the State of Delaware where any such person was, is, or is threatened to be made a party to or is involved in any action, suit or proceeding whether civil, criminal, administrative or investigative, by reason of the fact such person was serving the Company in such capacity. Generally, under Delaware law, indemnification will only be available where an officer or director can establish that such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. The by-laws of the Company limit the indemnification provided to a Company officer or director in connection with actions, suits, or proceedings commenced by the Company officer or director to instances where the commencement of the proceeding (or part thereof) was authorized by the Board of Directors of the Company.

The Company also maintains a director and officer insurance policy which insures the officers and directors of the Company and its subsidiaries against damages, judgments, settlements and costs incurred by reason of certain wrongful acts committed by such persons in their capacities as officers and directors.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4.1 - ConAgra Foods Certificate of Incorporation, as restated (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-07275) dated December 1, 2005)
 - 4.2 - Amended and Restated By-Laws of ConAgra Foods, Inc., as Amended (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-07275) dated November 29, 2007)
 - 4.3 - ConAgra Foods, Inc. Directors' Deferred Compensation Plan (incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended November 23, 2008 (File No. 001-07275) filed December 31, 2008)
 - 5.1 - Opinion of Counsel
 - 23.1 - Consent of KPMG LLP
 - 23.2 - Consent of Counsel (included as part of Exhibit 5.1)
 - 24.1 - Power of Attorney
-

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Omaha, State of Nebraska, on September 25, 2009.

CONAGRA FOODS, INC.

By: /s/ Gary M. Rodkin
Name: Gary M. Rodkin
Title: President and Chief Executive Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below on September 25, 2009 by the following persons in the capacities indicated.

Signature	Title
/s/ Gary M. Rodkin Gary M. Rodkin	President, Chief Executive Officer and Director (Principal Executive Officer)
/s/ John F. Gehring John F. Gehring	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
/s/ Patrick D. Linehan Patrick D. Linehan	Senior Vice President and Corporate Controller (Principal Accounting Officer)
Mogens C. Bay*	Director
Stephen G. Butler*	Director
Steven F. Goldstone*	Director
Joie A. Gregor*	Director
Rajive Johri*	Director
W.G. Jurgensen*	Director
Richard H. Lenny*	Director
Ruth Ann Marshall*	Director
Andrew J. Schindler*	Director
Kenneth E. Stinson*	Director

* This Registration Statement has been signed by the undersigned as attorney-in-fact on behalf of

each person so indicated pursuant to a power of attorney filed as Exhibit 24.1 to this Registration Statement.

/s/ Colleen Batcheler
Colleen Batcheler, Attorney-in-Fact

EXHIBITS

- 4.1 - ConAgra Foods Certificate of Incorporation, as restated (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-07275) dated December 1, 2005)
- 4.2 - Amended and Restated By-Laws of ConAgra Foods, Inc., as Amended (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-07275) dated November 29, 2007)
- 4.3 - ConAgra Foods, Inc. Directors' Deferred Compensation Plan (incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended November 23, 2008 (File No. 001-07275) filed December 31, 2008)
- 5.1 - Opinion of Counsel
- 23.1 - Consent of KPMG LLP
- 23.2 - Consent of Counsel (included as part of Exhibit 5.1)
- 24.1 - Power of Attorney