

September 1, 2015

**British Columbia Turkey Marketing Board**

Mr. Michel Benoit, General Manager  
Unit 106, 19329 Enterprise Way  
Surrey, BC V3S 6J8  
Email: mbenoit@bcturkey.com

**Alberta Turkey Producers**

Ms. Maryann Urbanowski, Acting E.D.  
4828-89 Street  
Edmonton, AB T6E 5K1  
Email: maryann@albertaturkey.com

**Turkey Farmers of Saskatchewan**

Ms. Rose Olsen, Executive Director  
1438 Fletcher Road  
Saskatoon, SK S7M 5T2  
Email: saskaturkey@sasktel.net

**Manitoba Turkey Producers**

Ms. Helga Wheddon, General Manager  
895-B Century Street  
Winnipeg, MB R3H 0M3  
Email: hwheddon@turkey.mb.ca

**Les Éleveurs de volailles du Québec**

Mr. Pierre Fréchette, Directeur général  
555, boul. Roland-Therrien, Bureau 250  
Longueuil, QC J4H 4G1  
Email: pierrefrechette@upa.qc.ca

**Turkey Farmers of New Brunswick**

Mr. Louis Martin, Secretary-Manager  
277 Main Street, Suite 103  
Fredericton, NB E3A 1E1  
Email: lmartin@nb.aibn.com

**Turkey Farmers of Nova Scotia**

Ms. Sonya Lorette, General Manager  
P.O. Box 407  
Canning, NS B0P 1H0  
Email: sonya@turkeyfarmersofnovascotia.com

**Canadian Poultry and Egg Processors Council**

Mr. Robin Horel, President & CEO  
1545 Carling Avenue, Suite 400  
Ottawa, ON K1Z 8P9  
Email: robinhorel@cpepc.ca

**Further Poultry Processors Association of Canada**

Mr. Robert de Valk, General Manager  
9017 Kudlac Street  
Niagara Falls, ON L2H 0C3  
Email: robertdevalk@gmail.com

**Re: Turkey Farmers of Canada ("TFC") and Turkey Farmers of Ontario ("TFO")  
Arbitration of TFC Promotion Agreement Penalty Decision of June 11<sup>th</sup>, 2015  
TFC Multiplier Breeder Policy Issues**

As you know from communications from the Farm Products Council of Canada ("FPCC"), TFO made a Complaint on July 10<sup>th</sup>, 2015 under section 7(1)(f) of the *Farm Products Agencies Act*, regarding a decision made by TFC on June 11<sup>th</sup>, 2015. A copy of that Complaint can be viewed on FPCC's website.

TFC and TFO have determined that aspects of that June 11<sup>th</sup>, 2015 decision are well suited to resolution through arbitration rather than the FPCC Complaint process and accordingly, TFO and TFC have agreed to submit certain aspects of TFO's complaint issues to binding arbitration.

Attached is a copy of the Arbitration Agreement made between TFC and TFO, as well as a draft of the Arbitration Schedule that contains questions/issues for arbitration. That Arbitration Schedule is not a final version as there may be further refinement of the questions/issues as the arbitration process develops.

As you will see, the Arbitration Agreement provides Provincial Commodity Boards and the two processor associations with an opportunity to attend and observe the arbitration hearing, which has yet to be scheduled. In addition, Provincial Commodity Boards and the two processor associations may participate as limited intervenors in the arbitration. Please confirm to me if your organization intends to seek intervenor status in the arbitration.

Yours truly,



John L. O'Kane

Encls.

cc. Turkey Farmers of Canada  
cc. Geoff Spurr, Counsel to TFO  
cc. FPCC

## Arbitration Agreement

Between:

Turkey Farmers of Ontario (“TFO”)

and

Turkey Farmers of Canada (“TFC”)

On June 11<sup>th</sup>, 2015, TFC made a decision that TFO has exceeded its authorized marketing and, pursuant to the Promotion Agreement, TFC had calculated liquidated damages of \$1,696,555.08 and a marketing reduction of 2,571,703 kilograms. The Record of Motion reflecting that TFC decision is attached to this Agreement.

TFO accepts as appropriate liquidated damages \$154,695.20 and a marketing reduction of 703,160 kilograms (eviscerated weight).

Aspects of that June 11<sup>th</sup>, 2015 decision flow from the Promotion Agreement contract between, among others, TFO and TFC (the determination of overmarketing; the calculation of liquidated damages; the determination of the marketing reduction, the expenditure of liquidated damages).

Aspects of that June 11<sup>th</sup>, 2015 decision flow from TFC’s quota regulating authority (re-allocation of the marketing reduction, adjusting further processing reference points in the National Commercial Allocation Policy).

Implementing TFC’s quota regulating authority aspects of the June 11<sup>th</sup>, 2015 decision will require additional future TFC decisions to (1) amend the Quota Regulation; and, (2) amend the National Commercial Allocation Policy.

TFO and TFC submit to arbitration the Promotion Agreement contract issues set out on the attached Arbitration Schedule, without prejudice to TFO’s right to challenge TFC’s additional future decisions to amend the Quota Regulation or amend the National Commercial Allocation Policy by way of Complaint to the Farm Products Council of Canada (“FPCC”) under section 7(1)(f) of the *Farm Products Agencies Act*.

The terms of the arbitration are:

1. The outcome of the arbitration will be final and binding on TFC and TFO and any intervenors, with no rights of appeal or review.
2. The arbitration shall be conducted in English.
3. Provincial turkey commodity boards and the Canadian Poultry and Egg Processors Council (CPEPC) and the Further Poultry Processors Association of Canada (FPPAC) will have limited intervenor status to file written briefs and attend the arbitration hearing.
4. The arbitration panel will be comprised of three arbitrators with the following experience/expertise: (1) one arbitrator will be a retired judge who will serve as the Chair; (2)

one arbitrator will be an expert in the turkey breeding industry; (3) one arbitrator will be experienced in administrative law and the supply management sector.

5. On the signing of this Agreement, TFO will withdraw its July 10<sup>th</sup>, 2015 Complaint to Farm Products Council of Canada (FPCC).
6. TFC Directors, TFO Directors and representatives of FPCC may attend the arbitration hearing as observers.
7. The costs of the arbitration panel will be paid in equal shares by TFC and TFO.
8. The arbitration will proceed expeditiously.
9. TFO and TFC will work cooperatively to develop an Agreed Statement of Facts but will each retain the right to present additional evidence, including expert evidence.
10. The evidence in the arbitration will be presented by sworn affidavits.
11. TFO and TFC will have the right to cross-examine on the affidavit evidence provided the cross-examinations are conducted expeditiously.
12. In all other respects the arbitration shall be governed by the provisions of the *Arbitration Act 1991*, S.O. 1991, Chapter 17.

Dated: August 24, 2015



Turkey Farmers of Ontario



Turkey Farmers of Canada

## RECORD OF MOTION

Turkey Farmers of Canada  
Directors, Alternates & Managers' Special Meeting  
Centre Room, Sheraton Cavalier Saskatoon Hotel  
Saskatoon, SK  
June 10 & 11, 2015

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MOVED by J. Wiersma (SK) and SECONDED by D. Ference (AB) that Turkey Farmers of Canada (TFC) has determined that Turkey Farmers of Ontario (TFO) has exceeded its authorized marketing and, in light of that TFC has, pursuant to the Promotion Agreement, calculated a liquidated damages penalty of \$1,696,555.08 and a kilogram reduction of 2,571,703 kg; and,

that 60% of the liquidated damages penalty that is collected from TFO be distributed to the other seven provinces based on their further processed reference point percentage shares for the purpose of market development and the remaining 40% be retained by TFC; and,

that the kilogram reduction for the period of the penalty to TFO be allocated to the provinces of BC, AB, SK, MB, QC, NB and NS based on their further processed reference point percentage shares; and,

the further processing reference volumes in the TFC National Commercial Allocation Policy for the provinces of BC, AB, SK, MB, QC, NB and NS be adjusted by 2,571,703 kg, using the further processed reference point percentage shares of those seven provinces, excluding ON; and,

further that the TFC Chair and Executive Member have the latitude to negotiate with the TFO regarding the terms for implementation of the kilogram reduction and liquidated damages assessment.

CARRIED

**Turkey Farmers of Canada ("TFC") & Turkey Farmers of Ontario ("TFO") Arbitration Schedule**

ISSUE	TFC POSITION	TFO POSITION
<b>THE TFC PROMOTION AGREEMENT - GENERALLY</b>		
Is the Promotion Agreement enforceable for the control periods: 1. 2013-2014? 2. 2012-2013? 3. 2011-2012? 4. 2010-2011?		
Can TFC expend liquidated damages collected under the Promotion Agreement by distributing amounts to Provincial Commodity Boards for market development?		
<b>THE TFC PENALTY DECISION</b>		
Was TFC's penalty decision premature?		
Was it appropriate for TFC to find that Ontario misreported marketings of turkey under the Multiplier Breeder Policy ("MBP") for the following control periods?		

**Turkey Farmers of Canada ("TFC") & Turkey Farmers of Ontario ("TFO") Arbitration Schedule**

<p>1. 2013-14? 2. 2012-2013? 3. 2011-2012? 4. 2010-2011?</p>		
<p>Is it the responsibility of the producer/province using the MBP to satisfy the MBP criteria, specifically:</p> <p>1. The age of the turkeys? and 2. That the turkeys had produced eggs or semen?</p>		
<p>Was it appropriate for TFC to determine, pursuant to the Promotion Agreement, that TFO had exceeded its authorized marketing for the following control periods:</p> <p>1. 2013-14? 2. 2012-2013? 3. 2011-2012? 4. 2010-2011?</p>		
<p>Was it appropriate for TFC to impose, pursuant to the Promotion</p>		

**Turkey Farmers of Canada ("TFC") & Turkey Farmers of Ontario ("TFO") Arbitration Schedule**

<p>Agreement, a marketing reduction on TFO of 2,571,703 kilograms?</p>		
<p>Was it appropriate for TFC to impose, pursuant to the Promotion Agreement, liquidated damages on TFO of \$1,696,555.08?</p>		