



## **DRAFT RULES FOR STEWARDS WITH RESPECT TO PAYMENT OF FEES (2007)**

### **1. Interpretation** in these Rules:

**Affiliates**, means a steward is affiliated with another entity if it controls or is controlled by the other entity or if both entities are controlled by a common entity, where "control" in the case of a corporation has the meaning ascribed thereto by subsection 1(5) of the Business Corporations Act (Ontario) as amended from time to time;

**Base Interest Rate** means the pre-judgment interest rate established from time to time under the Rules of Civil Procedures of the Courts of Justice Act for pre-judgment interest;

**Brand Owner**, with respect to a specific trademarked Printed Material which is Designated Blue Box Waste, and with respect to a specific good, the Packaging of which is Designated Blue Box Waste, where either the good or the Packaging bears a trademark means during any time in the Data Year;

- (a) a person Resident in Ontario who is the registered holder of the trademark, or
- (b) a person Resident in Ontario who is the licensee, in respect of the trademark, or
- (c) a person Resident in Ontario, who owns the intellectual property rights to the brand of the product or Printed Material, or
- (d) a person Resident in Ontario, who is the licensee, in respect of the intellectual property rights or the trademark;

Where "licensee" includes a person who packages goods, the Packaging of which is designated Blue Box Waste and bears a trademark, other than a packer or filler of Private Label Goods, and includes any person whose corporate name or business name registration contains the trademark;

**Commencement Date** means January 1, 2007;

**Data Year** means the calendar year January 1, 2006 to December 31, 2006;

**Designated Blue Box Waste** means Packaging, Service Packaging and Printed Materials that are comprised of metal, glass, paper, plastics, textiles or any combination thereof but does not include packaging or printed materials used exclusively for packaging products during their shipment from their place of manufacture to their place of distribution in Ontario, and packaging that is intended for continued use as packaging by the consumer over a period of five years or more;

**Excluded Waste** means Designated Blue Box Waste that is retained by a steward or its commercial customer, franchisee or licensee, at a location which one of them owns or occupies and is not carried away by retail customers and is not collected by municipal waste management services;

**Filed** means electronically submitted at [www.stewardshipdatasystem.ca](http://www.stewardshipdatasystem.ca) or delivered to 26 Wellington Street East, Suite 601, Toronto, Ontario, M5E 1S2;

**First Importer** means a person Resident in Ontario, who imports into Ontario:

- (a) a specific printed material which is Designated Blue Box Waste, for which a Brand Owner does not exist, or
- (b) a specific good, the packaging of which is Designated Blue Box Waste, for which a Brand Owner does not exist;

and includes a person Resident in Ontario who is the first to take title to such material or good, upon or after arrival in Ontario from elsewhere during the Data Year;

**Franchisor, Franchisee and Franchise System** have the meaning ascribed thereto under the Arthur Wishart Act (Ontario);

**Packaging** means materials that are used for the containment, protection, handling, delivery and presentation of goods sold or delivered to consumers in Ontario;

**Private Label Goods** means goods that carry the brand or trademark of a Brand Owner and sold or delivered to consumers by such Brand Owner that is a retail outlet in Ontario;

**Printed Materials** means printed materials that are sold, issued, distributed or delivered to consumers in Ontario;

**Published Address** means an address in Ontario appearing in a current telephone directory or a recognized current published business directory;

**Resident in Ontario**, with respect to a corporation, means a corporation that has a permanent establishment in Ontario, in accordance with the provisions of Appendix A, during any time in the Data Year;

**Rules** means these rules;

**Service Packaging** is packaging which may or may not bear a trademark that is filled or delivered at the point of sale by the retail, food service or other services providers to the consumer in Ontario to enable or facilitate the delivery of goods;

**Steward's Report** means a report prepared by a steward and filed with Stewardship Ontario, describing the aggregate amount of Designated Blue Box Waste, expressed in kilograms by category as required under these Rules, that were sold or delivered in Ontario in the Data Year by the steward and his Franchisees and / or his Affiliates containing the information in accordance with Appendix B;

## **2) Designation of Stewards**

- (1) A Brand Owner is designated as a steward with respect to all Printed Material, Service Packaging, and the Packaging of all goods, for which he is Brand Owner in the Data Year.
- (2) A First Importer is designated as a steward with respect to all Printed Material, Service Packaging, and the Packaging of all goods, for which he is First Importer in the Data Year.
- (3) A Franchisor is designated as a steward with respect to all Printed Material, Service Packaging, and the Packaging of all goods, which are within the relevant Franchise System in the Data Year.
- (4) In the event there are two Brand Owners for the same Designated Blue Box Waste, the Brand Owner or First Importer more directly connected to the production of the Designated Blue Box Waste shall be designated as the obligated steward, provided that in the case of a Franchisor who is Resident in Ontario, the Franchisor shall be designated as the obligated steward.
- (5) In the event that consumer products containing two or more independent brands are packaged together for sale in Ontario, then the Brand Owner more closely associated to the joint packaging shall be designated as the obligated steward for such joint Packaging;
- (6) Any person who delivers Service Packaging to consumers in Ontario in the Data Year.
- (7) Any person who elects to become a steward respecting Designated Blue Box waste that would otherwise be the responsibility of another steward, shall be designated a steward upon execution of a contract with Stewardship Ontario, notice of which appears on the Stewardship Ontario website, and the steward otherwise responsible is exempt from the requirement to pay fees respecting such Designated Blue Box Waste during the currency of the contract. Stewardship Ontario shall not be required to execute a contract contemplated herein.
- (8) Notwithstanding the above, any person who has executed a contract with Stewardship Ontario under clause 2(7) above prior to June 30, 2006, notice of which appears on the Stewardship Ontario website, shall remain an elected steward under the terms of the agreement.

## **3) Fees Payable**

- (1) Stewards shall pay fees to Stewardship Ontario in accordance with Appendix C of these Rules. The amount of fees payable shall be the sum for categories set out in the Steward's Report of the product of the amount of each such Designated Blue Box Waste set out in a Steward's Report multiplied by the rates set out in the table of fees attached as Appendix D of these Rules.
- (2) Stewards who are members of the Canadian Newspaper Association and the Ontario Community Newspapers Association shall pay applicable Stewardship Ontario administrative costs, in the aggregate, of fees payable, and will meet their obligation for funding to municipal programs, as calculated by Stewardship Ontario, by providing advertising lineage in a manner approved by Waste Diversion Ontario.
- (3) Stewardship Ontario may, acting reasonably, charge stewards an administration fee, which fee shall take effect upon publication of the fees on the Stewardship Ontario website.

#### **4) Steward's Report**

- (1) Subject to Section 6, every steward shall file a Steward's Report with Stewardship Ontario not later than 90 days after Commencement Date, or 90 days after such steward is notified, whichever is later. A steward is notified:
  - (a) on the day the steward receives personal service via email, or
  - (b) three days following the sending by prepaid first class postage to the steward at its Published Address in Ontario, of a copy of these Rules or a written notice of how to obtain a copy of these Rules,
- (2) Stewards may amend a Steward's Report with the consent of Stewardship Ontario to correct information in the Steward's Report that is in error or to replace data previously determined by a formula or a calculator provided by Stewardship Ontario.
- (3) If a Steward's Report has not been filed within 90 days of the date specified in Section 4(1) of these Rules, Stewardship Ontario may file a Steward's Report on behalf of such steward, based on the steward's previous years Steward's Report.

#### **5) Penalties, Interest and Back Fees**

- (1) Stewards who fail to pay fees by the dates specified in Appendix D, will be subject to a penalty calculated at 10% of fees due and payable.
- (2) Interest on unpaid fees shall accrue from such date at the Base Interest Rate plus 3%.
- (3) Stewards who fail to file a Steward's Report within 30 days of the date specified in Section 4 (1) shall be subject to a penalty calculated at 5% of steward's previous year's fees.
- (4) If a Steward's Report has not been filed within 90 days of the date specified in Section 4 (1), Stewardship Ontario may impose an additional penalty of 10% of 2007 applicable fees due. .
- (5) Should a steward who is exempt from paying fees under Section 6 of these Rules, fail to file a Steward's Report within 90 days of the date specified in Section 4 (1), such steward shall be liable to a penalty of \$500.
- (6) Stewardship Ontario may waive all or part of any penalty or interest charges otherwise payable under these Rules.
- (7) In the event that the amounts reported in a Steward's Report are inaccurate, any deficiency in fees paid resulting from such inaccuracies shall be immediately due and payable from the date of the filing of the correcting Steward's Report, and if not paid within 30 days will be subject to a penalty equal to 10% of such fee deficiency.

## **6) Steward Exemptions**

- (1) Stewards are exempt from filing a Steward's Report and paying the fees otherwise due if during the Data Year, the steward, its Affiliates, and Franchisees had combined gross revenues from the sale of all its products and services in Ontario which was less than \$2 million, which for stewards in the business of retailing the gross revenues shall be deemed to be the revenue from services provided and the cost of their merchandise sold was less than \$2 million.
- (2) Stewards shall file a Steward's Report but shall be exempt from payment of fees otherwise due provided that during the Data Year, the steward, its Affiliates and Franchisees sold, distributed, issued or delivered Packaging, Service Packaging and Printed Materials, into Ontario, an aggregate quantity of less than 15,000 kilograms.
- (3) A Steward, its Affiliates and Franchisees shall not file any Steward's Report reporting less than 15,000 kgs in the aggregate if the steward, its Affiliates and Franchisees sold, distributed, issued or delivered Packaging, Service Packaging and Printed Materials, into Ontario, with a combined quantity of greater than 15,000 kilograms. .
- (4) For greater clarity, where a steward files a Steward's Report, respecting Affiliates or Franchisees, such Affiliates and Franchisees shall not file a Steward's report.
- (5) Stewards that are not for profit entities (including municipalities, provincial agencies, colleges, universities) are not exempted by 6(1).
- (6) Notwithstanding the above Stewardship Ontario may, acting reasonably require a steward to file a Steward's Report by sending a written request to a steward.

## **7) Record Provision and Retention**

- (1) Stewards shall promptly provide data including calculation methodology, packaging data, audit reports, list of brands reported and list of brands excluded from report, and allocation percentages, used by stewards in the preparation of the Steward's Report upon request from Stewardship Ontario.
- (2) Stewards shall retain records to substantiate and verify the amount set out in their respective Steward's Report for a period of not less than five years from the date of the Steward's Report to which they relate. A steward shall grant access to Stewardship Ontario upon its request to examine its books and records to enable Stewardship Ontario to audit and inspect such records respecting a Steward's Report up to five years after the date of receipt of such Report by Stewardship Ontario.

## **8) Dispute Resolution**

If any dispute arises between a steward and Stewardship Ontario as to the amount of Designated Blue Box Waste that is required to be included in a Steward's Report:

- (1) The parties shall attempt to resolve the dispute through designated representatives from each of Stewardship Ontario and the steward within thirty (30) days upon which written notice of the dispute was first given, or as otherwise agreed upon;

*Draft Rules for January 1 to December 31, 2007*

- (2) If the parties are unable to resolve the dispute within the above period, the steward and Stewardship Ontario shall within thirty (30) days thereafter jointly select an arbitrator to arbitrate the dispute.
- (3) The arbitrator shall render a decision on the dispute and the award arising there from, in accordance to the Arbitration Act Ontario.
- (4) Non-payment or failing to file a Steward's Report by a steward shall not be items subject to arbitration.

**9) Interpretive Memoranda**

Stewardship Ontario may publish on its website interpretive memoranda describing its interpretations of these Rules and how it proposes to administer them.

**10) Publishing of Company names**

- (1) The names of stewards reporting under Section 6, with Stewardship Ontario will be posted on the Stewardship Ontario website as such.
- (2) The names of stewards submitting Steward's Reports to Stewardship Ontario will be posted on the Stewardship Ontario website.
- (3) The names of stewards who have executed a contract with Stewardship Ontario under section 2 (7) shall be posted on the Stewardship Ontario website.
- (4) Stewardship Ontario may post the registry of all brands reported in Steward's Reports from time to time.
- (5) Stewardship Ontario may publish on its website the names of any person that may appear to be a steward Resident in Ontario, but which it has determined upon investigation not to be Resident in Ontario.

## **Appendix A**

### **Resident in Ontario (Corporation)**

**Resident in Ontario, with respect to a corporation, means a corporation that has a permanent establishment in Ontario, where:**

- (a) “**permanent establishment**” includes branches, mines, oil wells, farms, timberlands, factories, workshops, warehouses, offices, agencies and other fixed places of business and
- (b) the following rules apply,

#### **Contracting Employees or Inventory Sufficient**

Where a corporation carries on business through an employee or agent who has general authority to contract for the corporation or who has a stock of merchandise owned by the corporation from which the employee or agent regularly fills orders which the employee or agent receives, such employee or agent shall be deemed to operate a permanent establishment of the corporation.

#### **Commission Agent not Sufficient**

The fact that a corporation has business dealings through a commission agent, broker or other independent agent shall not of itself be deemed to mean that the corporation has a permanent establishment.

#### **Parent of Subsidiary not Sufficient**

The fact that a corporation has a subsidiary controlled corporation in a place or a subsidiary controlled corporation engaged in a trade or business in a place shall not of itself be deemed to mean that the first-mentioned corporation is operating a permanent establishment in that place.

#### **Licensed Insurance Company Sufficient**

An insurance corporation is deemed to have a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business.

#### **Purchasing Office not Sufficient**

The fact that a corporation maintains an office solely for the purchase of merchandise shall not of itself be deemed to mean that the corporation has a permanent establishment in that office.

#### **Ownership of Land Sufficient**

Where a corporation, otherwise having a permanent establishment in Canada, owns land in a province or territory of Canada, such land is a permanent establishment.

#### **Production Packing and other Activities Sufficient**

The fact that a non-resident corporation in a year produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed in whole or in part anything in Canada, whether or not the corporation exported that thing without selling it prior to exportation, shall of itself, be deemed to mean that the corporation maintained a permanent establishment at any place where the corporation did any of those things in the taxation year.

#### **Machinery or Equipment Sufficient**

The use of substantial machinery or equipment in a particular place at any time in a year of a corporation

constitutes a permanent establishment of such corporation in that place for such a year.

**Principal Place of Business Sufficient**

Where a corporation has no fixed place of business, it has a permanent establishment in the principal place in which the corporation's business is conducted.

**Charter or By Laws designating Head or Registered Office Sufficient**

Where a corporation does not otherwise have a permanent establishment in Canada, it has a permanent establishment in the place designated in its charter or by-laws as being its head office or registered office

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**Appendix B**  
**Form of Steward's Report**

Name of Steward

Mailing address

Billing address

Primary Contact Person for Steward's Report

Email address

**Kilograms of Designated Blue Box Waste Sold or Delivered in Ontario in 2006 for the brands owned, or first imported into Ontario in the calendar year 2006**

Printed Paper Category	Printed Paper Sub-Categories	Kilograms
Printed Paper	Newspaper CNA / OCNA members Newspaper non CNA/OCNA members Magazines and catalogues Directories (telephone /postal books) Other printed materials	

Packaging Categories	Packaging Sub-Categories	Kilograms
Paper Packaging	Corrugated packaging, Gable top containers, Aseptic containers, Paper laminants Boxboard/other paper packaging,	
Plastic Packaging	PET bottles, HDPE bottles, LDPE/HDPE film, Polystyrene, Plastic laminants,	

*Draft Rules for January 1 to December 31, 2007*

	Other rigid plastics, Natural / Synthetic textiles	
Aluminum Packaging	Food and beverage containers Foil and other aluminum packaging	
Steel and Other Metal Packaging	Aerosol containers, Paint cans, Other steel and metal containers,	
Glass Packaging	Clear (flint) glass containers Colour glass containers	

Required information to be included in the Steward's Report:

1. Description of methodology and data used to prepare this Steward's Report;
2. Description of Excluded Waste deductions from Report, including kilograms or percentage used by material type;
3. List of brands, trade marks or publication titles covered in this Steward's Report;
4. List of affiliates and /or franchisees included in this Steward's Report; and
5. Declaration of accuracy of contents of this Steward's Report

**Appendix C**  
**Payment Schedule**

If a steward is notified within the meaning of 4(1) on or before December 28, 2006, then the payment deadlines shall be as follows

<b>Description of Steward Responsibility</b>	<b>2007 Payment Due Date</b>
First payment due (25% of 2007 Obligation)	April 27, 2007
Second payment due (25% of 2007 Obligation)	June 29, 2007
Third payment due (25% of 2007 Obligation)	September 28, 2007
Fourth payment due (25% of 2007 Obligation)	December 3, 2007

If a steward is notified within the meaning of 4(1) later than December 28, 2006, then the payment deadlines shall be as follows:

<b>Notification date is after</b>	<b>Payment schedule</b>	<b>% of Obligation</b>	<b>2007 Payment Due Date</b>
December 28, 2006 and before March 27, 2007	First	25	Notification date plus 93 days
	Second	25	June 29, 2007
	Third	25	September 29, 2007
	Fourth	25	December 1, 2007
March 28, 2007 and before June 27, 2007	First	50	Notification date plus 93 days
	Second	25	September 29, 2007
	Third	25	December 1, 2007
June 28, 2007 and before August 29, 2007	First	75	Notification date plus 93 days
	Second	25	December 1, 2007
August 30, 2007	First	100	Notification date plus 93 days

**Appendix D**

**Table of Fees: January 1 to December 31, 2007**

<b>Category</b>	<b>Material</b>	<b>Fee</b>
Printed materials	Newspaper CNA/ OCNA members	¢/kg
	Newspaper Non CNA/OCNA members	¢/kg
	Magazine and catalogues	¢/kg
	Telephone directories	¢/kg
	Other printed paper	¢/kg
<b>Category</b>	<b>Material</b>	<b>Fee</b>
Paper packaging	Gable top containers	¢/kg
	Aseptic containers	¢/kg
	Paper laminants	¢/kg
	Corrugated cardboard	¢/kg
	Boxboard and other paper	¢/kg
Plastic packaging	PET bottles	¢/kg
	HDPE bottles and jugs	¢/kg
	Polystyrene	¢/kg
	Other rigid plastics	¢/kg
	LDPE/HDPE film	¢/kg
	Plastic laminants	¢/kg
Steel and other metal packaging	Aerosol containers	¢/kg
	Paint cans	¢/kg
	Other steel and metal containers	¢/kg
Aluminum packaging	Food and beverage cans	¢/kg
	Foil and other aluminum packaging	¢/kg
Glass packaging	Clear (flint)	¢/kg
	Coloured	¢/kg