



August 30, 2005

## Introduction to Proposed Changes for 2006 Rules

The Rules that govern the Blue Box Program Plan (BBPP) are modified each year for the following reasons:

- Annual address changes to dates
- Annual changes in material fee rates,
- Clarify the Rules for stewards, and
- Address shortcomings that come to the attention of Stewardship Ontario to ensure a level playing field.

For 2006, Stewardship Ontario is proposing changes to the Rules that are substantive from previous Rules and require consultation with its members.

The proposed Rules for 2006 are attached for your review. The following table will assist you in identifying the type of proposed change:

Type of Change	How it is Identified in Rules	Found on Pages
Substantive – for consultation	- there are three numbered, shaded boxes in Rules that will be focus of discussion	1, 3, 5
New - for information only	- identified in Rules by <b><i>bold italics</i></b>	1, 2, 3, 4, 5, 6, 8, 11
Minor 'house cleaning'	- identified in Rules by <u>underline</u>	1, 2, 5, 7

A copy of the current 2005 Rules are accessible via Stewardship Ontario website: [http://www.stewardshipontario.ca/pdf/rules\\_privacy/2005\\_Fees\\_wRules.pdf](http://www.stewardshipontario.ca/pdf/rules_privacy/2005_Fees_wRules.pdf)

**RULES FOR STEWARDS WITH RESPECT TO PAYMENT OF FEES (2006)**

Rules made by Stewardship Ontario respecting the Blue Box Program Plan. 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.*

**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,

- (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*;

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*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 any person whose corporate name or business name registration includes the trademark.*

*In the event there are two Brand Owners for the same Designated Blue Box Waste, only the person who is the licensee, or the Brand Owner more directly connected to the production of the Designated Blue Box Waste, shall be the Brand Owner for such Designated Blue Box Waste, except in the case of a Resident in Ontario Franchisor who shall be designated as the obligated steward.*

**Commencement Date** means January 1, 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.

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**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 arrival in Ontario from elsewhere;

**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** means goods that carry the brand or trademark of a 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 B.

**Rules** means these rules;

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

**Steward's Report** means a report prepared by a steward and filed with Stewardship Ontario, describing the amount of Designated Blue Box Waste, expressed in kilograms by category as required under these Rules, that were sold or delivered in Ontario in 2004 by the steward and containing the information and calculated in accordance with Appendix A.

**A) Designation of Stewards**

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) Any person who delivers Service Packaging to consumers in Ontario.***

(v) 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.

***(vi) Notwithstanding the above, any person who has executed a contract with Stewardship Ontario under clause A (v) above prior to January 1, 2006 (or Commencement Date), notice of which appears on the Stewardship Ontario website, shall remain an elected steward under the terms of the agreement.***

(vii) An election under clause A (v) may be made only by a person who would otherwise be a brand owner, but is not resident in Ontario, but such election may not be made by a person who would be eligible for an exemption described in clause E (i) or E (ii).

**B) Fees Payable**

(i) Stewards shall pay fees to Stewardship Ontario in accordance with 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 Stewards' Report multiplied by the rates set out in the table of fees attached as Table 1 to these rules.

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**Table 1: Table of Fees  
January 1 to December 31, 2006**

<b>Category</b>	<b>Material</b>	<i>Annualized Fee</i>
<b><i>Printed Paper</i></b>	Newspaper CNA/ OCNA Members	¢/kg
	Newspaper Non CNA/OCNA	¢/kg
	Magazine and Catalogues	¢/kg
	Telephone Directories	¢/kg
	Other Printed Paper	¢/kg
<b><i>Packaging</i></b>		
Paper based packaging		¢/kg
Plastic packaging		¢/kg
Steel packaging		¢/kg
Aluminum packaging	Food and beverage cans	¢/kg
	Foil and other aluminum packaging	¢/kg
Glass packaging	Clear	¢/kg
	Coloured	¢/kg

- (ii) *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*

*Please note: removal of LCBO's \$5 million limit.*

**C) Steward's Report**

Subject to paragraph (D) below, every steward shall pay the fees payable under these Rules and 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,

The names of stewards submitting reports to Stewardship Ontario will be posted on the Stewardship Ontario website.

**D) Penalties, Interest and Back Fees**

Stewards who fail to pay fees by the dates specified in *Appendix C*, will be subject to a penalty calculated at 10% of fees due and payable. Interest on unpaid fees shall accrue from such date at the Base Interest Rate plus 3%<sup>1</sup>.

**E) Steward Exemptions**

- (i) Stewards are exempted from filing a Steward's Report and paying the fees otherwise due if during the 12 calendar months of 2004, the steward and its Affiliates had combined gross revenues from the sale of all its products and services in Ontario which was less than \$2 million, which in a retail context shall mean the cost of goods purchased was less than \$2 million.

- (ii) Stewards shall file a Steward's Report but will be exempt from payment of fees otherwise due provided that during the 12 calendar months of 2004, if the steward and its *Affiliates sold, distributed, issued or delivered Packaging, Service Packaging and Printed Materials, into Ontario, a combined quantity of less than 15,000 kilograms.*

- (iii) *Stewards that are not for profit entities (including municipalities, provincial agencies, colleges, universities) only the 15,000 kilograms exemption described above in (ii) shall apply.*

The names of stewards reporting under this subsection, with Stewardship Ontario will be posted on the Stewardship Ontario website as such.

- (iv) 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.

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**F) Record Retention**

Stewards shall maintain records to substantiate and verify the amount set out in their respective Report for a period of not less than five years from the date of the Report to which they relate. Stewardship Ontario shall have the right to audit and inspect such records respecting a Report up to five years after the date of receipt of such Report by Stewardship Ontario.

**G) 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:

- (i) 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;
- (ii) 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.
- (iii) The arbitrator shall render a decision on the dispute and the award arising there from, in accordance to the Arbitration Act Ontario.
- (iv) Non-payment or failing to file a Steward's Report by a steward shall not be items subject to arbitration.

**H) Interpretive Bulletins**

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

**I) Installment Schedule**

*Stewardship Ontario may publish on its website, in advance of a fee payment period, a schedule for payment of fees by installments which may modify Appendix (C) of these rules.*

**J) Publishing of Company names**

*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**

**Form of Steward's Report**

Name of Steward

Mailing address

Billing address

Primary Contact Person for Steward's Report

**Kilograms of Designated Blue Box Waste Sold or Delivered in Ontario in 2004.**

Printed Paper Category	Printed Paper Sub-Categories	Kilograms
Printed Paper	Newspaper CNA / OCNA members Newspaper non CNA/OCNA members Magazines and catalogues Telephone books Other printed papers	

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 laminant film Other rigid plastics, Natural / Synthetic textiles	



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Ferrous Packaging	Steel aerosol containers, Steel paint cans, Other steel containers,	
Aluminum Packaging	Aluminum food and beverage cans, Aluminum foil and other aluminum packaging,	
Glass Packaging	Clear glass containers Colour glass containers	

Description of methodology and data used to prepare this Steward's Report

Description of Excluded Waste deductions from Report, including kilograms or percentage used by material type

List of brands, trade marks or publication titles covered in this Steward's Report

Declaration of accuracy of contents of this Steward's Report

Notwithstanding the above, Stewardship Ontario has the right to request a Steward to provide data (such as data tables, 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.

## **Appendix B**

### **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.

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**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

*Appendix C*

*Reporting and Payment Schedule*

<i>Description of Steward Responsibility</i>	<i>2006 Deadline</i>
<i>File Stewards Report</i>	<i>March 31, 2006</i>
<i>First payment due (25% of 2006 Obligation)</i>	<i>March 31, 2006</i>
<i>Second payment due (25% of 2006 Obligation)</i>	<i>June 30, 2006</i>
<i>Third payment due (25% of 2006 Obligation)</i>	<i>September 30, 2006</i>
<i>Fourth payment due (25% of 2006 Obligation)</i>	<i>December 1, 2006</i>

*For Stewards whose notification date is after December 28, 2005, the deadline to file a Steward's Report and make their first payment is 93 days from the company's notification date. The first payment is equal to:*

*25% if the reporting deadline is before June 30, 2006*

*50% if the reporting deadline is before September 30, 2006 and,*

*75% if the reporting deadline is before December 1, 2006.*

*After first payment is made, the regular schedule of payments shall be applicable.*

*Note: Penalties and Interest*

*Stewards who fail to pay fees as set out in the installment schedule above shall pay in addition:*

- 1. A penalty of 10% of the fees due and payable, and*
- 2. Interest at the posted prime interest rate plus 3% on any outstanding balance due.*