



Stewardship Ontario

Stakeholder Feedback on Stewardship Ontario 2016 Rules

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Introduction

Stewardship Ontario reviewed the proposed changes to the 2016 Stewardship Ontario Rules with stewards at the March 3rd reporting webinar. Subsequently the draft rules were posted on Stewardship Ontario's website for stakeholder comment with a deadline for stakeholder feedback of April 8, 2016. Stewardship Ontario received comments from seven organizations (stewards and their trade associations) with the majority of comments focused on the adjustment policy and the use of administrative fees. It has become clear in reviewing the feedback to the 2016 Rules that these stewards were unaware of the Two Year Adjustment Policy, which has been in the Stewardship Ontario Rules since 2012 and has been the practice for many years. Many of the organizations that submitted comments thought that the adjustment policy was new. In fact, the only change to the 2016 Rules, regarding the Adjustment Policy is the addition of a reference to the Policy in Section 3.2.10 of the 2016 Rules and the alignment of the two year limit on adjustment requests with the deadline for submitting steward reports (May 31 of each year). Please find the Adjustment Policy [here](#).

The Adjustment Policy and the use of administrative fees are policies and practices which were instituted to ensure compliant stewards in good-standing do not incur financial burdens or inconvenience because of the activities of stewards who report and pay late or report incorrectly. Late payment charges, audit costs and limitations on time periods for claiming credits for past reporting errors are all designed to ensure that costs are not shifted unfairly to the majority of compliant stewards. These policies are consistent with prudent commercial practices and are designed to deter behaviours that harm Stewardship Ontario's collective membership.

The following is a summary of the feedback received by Stewardship Ontario, bearing in mind that much of the feedback relates to policies and practices already entrenched in the Rules. Appendix A to this document provides a summary of Stewardship Ontario's response to the primary comments, which in turn will be used to respond to each steward on an individual basis.

Retroactivity

Several stewards questioned the authority of Stewardship Ontario to apply the new rules retroactively to January 1, 2016 given that stewards were advised of the proposed Rule changes on March 10th. Consequently, Stewardship Ontario will advise stewards that the Rules will be applied as of the date the Rules are approved. As stated above, the only material change to the Rules is the alignment of the two-year deadline for requests for adjustments with the due date of steward reports which is May 31 each year. This means for example, that a request for adjustments for a report submitted in 2014 to the steward's 2014 report (2013 data), would have to be received by Stewardship Ontario by May 31, 2016. Stewardship Ontario will however, honour any requests for adjustments to 2015 reports submitted before the 2016 Rules were approved.

Adjustment Policy

All policies developed by Stewardship Ontario are designed to protect the interests of the collective membership, to ensure the fair and equal treatment of each member and to allow the program to operate in a cost-effective manner. As mentioned above, the majority of comments received by Stewardship Ontario focused on the misunderstanding that Stewardship Ontario was introducing a revision to the adjustment policy. As previously noted, this is not the case however, the following are the comments received by stewards on the Two Year Adjustment Policy:

- Three organizations disputed the rationale behind the policy questioning whether the policy did indeed limit the financial impact on the broader steward community when they viewed it simply as a deferral of the payment of funds that should have been remitted at an earlier date.
- One steward commented on the limited ability of stewards to understand the extent to which the adjustment policy limits the impact on the fee setting process given that stewards have no understanding of the annual net adjustments requested in each province and what those adjustments represent as a percentage of total fees. They suggested that if stewards had better insight into those details it would help them understand the extent to which adjustments impact the fee setting process.
- Two organizations sought clarification on whether or not the revised adjustment policy would apply to both under-reporting and over-reporting, suggesting that it should apply equally in both scenarios. In fact, the adjustment policy does apply to both under and over reporting, as well a number of other common errors. However, it also explicitly states that adjustments made as a result of a methodology change are not accepted.
- Several organizations put forward the view that the two year adjustment policy and the five-year record retention policy should be aligned which would provide more balanced obligations on all parties. Stewardship Ontario's rules do require that stewards retain their records for five years. Typically this provision would only be used in cases where a steward is suspected of consistently under-reporting and therefore not paying their fair share. It enables Stewardship Ontario to conduct a review as far back as five years and collect on the resulting debit – to the benefit of the rest of the steward community.
- In the implementation of the adjustment policy, organizations asked that:
 - Credits payable to stewards be carried out in the same 30 day timeframe as stewards are required to pay debits;
 - Stewards be eligible for payment of interest on credits owed by SO, similar to the requirement that stewards pay interest on overdue amounts owed to SO;
 - Stewards be given more than 30 days to respond to SO requests for data.

Credits payable to stewards are due to stewards in a future year because the supplied quantities serving as the basis for the credit would have been included in the fee setting process and therefore would have contributed to the overall revenue needed to fund Stewardship Ontario operations and the municipal obligation. The deferred due date allows Stewardship Ontario to include the value of the credit note in a subsequent year's fee setting cycle to ensure the funds are available. Stewardship Ontario works with stewards in providing a reasonable timeframe for providing the requested data to support a review of their steward report. Where the value of credits is deemed small, or immaterial, we do not enforce the deferred due date.

- In considering what types of adjustments stewards are able to request, the following feedback was received from stakeholders:
 - Adjustments related to incorrect reporting of ICI materials should be allowed and not be interpreted as a methodology change since ICI materials are an excluded material;
 - Adjustments on adjustments should be permitted in some instances since there is still much confusion as to where stewardship responsibilities lie between retailers and manufacturers;
 - The new adjustment policy should not impact adjustment requests received by SO prior to the 2016 Rules being posted for comment

Stewardship Ontario has not permitted adjustments on estimates of ICI materials since 2012 but we do allow adjustments on adjustments in extraordinary circumstances. Stewardship Ontario will honour any requests for adjustments to 2015 reports submitted before the 2016 Rules are approved in accordance with the Rules currently in effect.

Administrative Fees

Stewardship Ontario also received feedback on its policy on the use of administrative fees -- a policy that has been in place for many years.

Overall feedback suggested that rather than charging administrative fees to stewards for the cost of an audit or review, administrative fees should be included in Stewardship Ontario's overall budget since this work is viewed as the normal business processes of the organization. Additionally, if administrative fees are charged to stewards for the costs associated with audits or reviews, those fees should be clearly outlined up front for stewards and determined against an established fee setting structure.

Stewardship Ontario does receive sign-off from the steward on the costs associated with a review of their steward report prior to that work being undertaken and, as stated previously, Stewardship Ontario believes that costs incurred by non-compliant stewards should not be shifted unfairly to the majority of compliant stewards which is the reason these costs are not included in the organization's operating budget.

Conclusion

Stewardship Ontario appreciates the time that stewards and their trade associations took to provide feedback on the 2016 Rules and will provide a written response to each of the organizations that submitted comments. We consider all stakeholder feedback against the program's overall guiding principles of ensuring that the Rules governing the program protect the interests of the collective membership and that all members are treated fairly and equitably.

SO believes that in order to maintain fairness and equal treatment for all participating stewards it is necessary to have policies and practices in place that ensure that compliant stewards do not incur financial burdens or inconvenience because of the activities of stewards who report and pay late or report incorrectly. Stewardship Ontario's policies on administrative fees and limitations on time periods for adjustment requests are designed to ensure the fair and equal treatment for all stewards.

Appendix A: Stewardship Ontario’s Response to Stakeholder Feedback on 2016 Rules

Issue Raised by Steward	Stewardship Ontario Response
Retroactivity of Two Year Adjustment Policy	<p>The Adjustment Policy has been adopted by the Stewardship Ontario Board. It is not a new policy but has been part of Stewardship Ontario’s operating practices for many years and has been in the Rules since 2012. Given that this has been Stewardship Ontario’s practice and policy, and that the two-year limitation aligns with the Limitations Act, it is considered to be a reasonable approach. The two year Adjustment Policy has been amended in 2016 only to align the two year limit on adjustment requests with the deadline for submitting steward reports (May 31 of each year) and by including a reference to the Adjustment Policy in the Rules. Stewardship Ontario will honour any adjustment requests received from stewards prior to the approval of the 2016 Rules.</p>
Two Year Adjustment Policy	<p>Stewardship Ontario’s policies and procedures are developed to promote fairness for all stewards and to enable the stewardship program to operate in a cost effective manner.</p> <p>With respect to the Adjustment Policy, Stewardship Ontario believes that stewards have an obligation to report accurately and on time ensuring that program costs are fairly shared among stewards. On occasion, adjustments to quantities reported by stewards are required. These adjustments can impact the total quantities of supplied tonnes (i.e., steward-reported tonnes) which in turn impacts fee setting for the subsequent year. The adjustment policy is designed to limit the negative impact of credit adjustments on the steward community by capping the allowable retroactive adjustment period to two years. Credit adjustments to individual stewards impact the rest of the community because funds may need to be included in the program budget and recouped in fees in subsequent years to cover an individual steward’s claim. Stewardship Ontario works to avoid fee instability while providing stewards with sufficient time to identify possible issues in their report, review data and then collect any required substantiation and internal approvals before submitting a completed adjustment request.</p>
Administrative Fees	<p>The governing principle on administrative fees is that costs incurred to the program by an individual steward should be paid for by that steward and not be passed on to the rest of the steward community. Administrative fees ensure that the costs associated with processing an adjustment (due to report inaccuracies) or applying a proxy report (due to late reporting for example), are assigned to the individual steward rather than the entire steward community. Stewardship Ontario receives sign-off from the stewards on the costs associated with an audit or review prior to that work being carried out.</p>