

## **OTS 2012 Rules for Stewards Amendments**

In preparing the 2012 Ontario Tire Stewardship (OTS) Rules for Stewards, OTS has proposed several amendments to the including:

- I. Changes to the OTR TSFs as a result of changes to the assumed OTR Tire supply and the adoption of a conservative position on the part of OTS regarding the expected issuance of a Ruling on the taxable status of the OTS program. More detailed background information regarding these matters can be found in the OTS 2012 Budget Report.
- II. Additions to the OTR tire definitions that incorporate maximum estimated new tire weights by category for the purposes of tire classification and TSF reporting and remitting. OTS has identified incidents of confusion on the part of Stewards regarding the correct classification of new tires for the purposes of preparing their TSF Remittance Reports. As a result OTS conducted a new tire supply market study assessing the maximum estimated tire weights which should be reported in each category. The inclusion of these maximum weight limits (whereby a tire that may meet the rim diameter restriction for a smaller tire type but be over the maximum weight for the tire type would be reported and remitted on by the Steward in the larger tire type, even if the intended purpose of the tire is destined for the smaller tire type) will provide greater clarity for Stewards on the proper classification of their tires in reporting to OTS, and will more closely align the revenues and expenses of the Used Tire Program by ensuring that the amount remitted for a given tire supply is aligned with the cost of managing that tire through the Program.
- III. The Table in Appendix A: Tire Definitions is amended with the addition of an exemption from the requirement to report and remit the TSF on tires under 7" overall diameter. While these tires are present in the marketplace, research indicates that the quantity of material and costs that they represent in the Used Tire Program are immaterial. In addition the application of the PLT rate TSF to these tires/wheels is disproportionate to both the costs incurred by the Program to manage them, and the price point at which they are supplied into the market (< \$15). As a result OTS is proposing to exempt these classes of tires from the obligation to report and remit.
- IV. The Table in Appendix A: Tire Definitions is amended with the addition of an exemption from the requirement to report and remit the TSF on tires where the rubber portion of the tire is composed of >50% recycled rubber from Used Tires. The intent of the OTS program is to stimulate higher value added processing and manufacturing activity using recycled tire materials, the introduction of this exemption will provide a market signal to manufacturers of new tires that incents the use of recycled tire materials in new tire manufacturing. At this time OTS is not aware of any manufacturer supplying tires that would meet this standard, however OTS will continue to monitor the tire market and assess the impact of the exemption on other Stewards and reserves the right to make modifications to / repeal this exemption as necessary to meet its other obligations with respect to the operation of the Used Tire Program under the Waste Diversion Act and the operating agreement with WDO.

Based on this the OTS Board is suggesting the amendments to the Rules for Stewards in 2012. These are reflected in the complete amended Rules below.

## Rules for Stewards

### ONTARIO TIRE STEWARDSHIP

#### RULES FOR STEWARDS WITH RESPECT TO PAYMENT OF TIRE STEWARDSHIP FEES

##### 1. Interpretation

In these Rules, the following terms shall have the following meanings. A reference to a statute or act of any legislature shall, unless otherwise expressly provided, be deemed to refer to such statute or act as it existed at the date of these Rules and as it may be amended or replaced from time to time. The headings used throughout these Rules are solely for convenience and are not to be used as an aid in the interpretation of these Rules. The singular or masculine or neuter, as used in these Rules, shall be construed to mean the plural or feminine or body corporate where the context of these Rules may so require. Capitalized terms which are not otherwise defined will have the meaning given to them in the *Waste Diversion Act, 2002*:

**Affiliate** means an affiliated body corporate within the meaning of subsection 1(4) of the *Business Corporations Act* (Ontario);

**Base Interest Rate** means the interest rate established from time to time under the Rules of Civil Procedure of the *Courts of Justice Act*, as amended from time to time, for prejudgment interest;

**Brand** means a trademark within the meaning of the *Trade-marks Act (Canada)*, whether or not registered pursuant thereto;

**Brand Owner** means, with respect to Branded Tires, during any time in the Data Period:

- (a) a Person Resident in Ontario who is the registered owner of the Brand, or
- (b) a Person Resident in Ontario who is a licensee of the registered owner of the Brand, or
- (c) a Person Resident in Ontario, who owns the intellectual property rights to the Brand, or
- (d) a Person Resident in Ontario, who is a licensee, in respect of the intellectual property rights to the Brand;

**Branded** means that a Brand is attached to or otherwise associated with Tires;

**Commencement Date** means September 1 2009;

**Commercial Connection**, for the purposes of these Rules, means that a Person derives a direct economic benefit when the particular New Tires are Supplied in Ontario;

**Data Period** means each one month period ending the last day of each calendar month starting on the Commencement Date;

**Exempted Tires** means New tires which are not required to be reported as supplied or remitted on by a Steward.

**Filed** means electronically submitted or mailed to OTS at an address identified to the Stewards by mail or electronically, with confirmation of transmission in the case of sending by electronic means;

**First Importer** means a Person Resident in Ontario who imports New Tires into Ontario but is not a Brand Owner of such New Tires, and includes a Person Resident in Ontario who is the first to take title to or delivery or possession of such Tires, upon or after arrival in Ontario from elsewhere during the Data Period. A Person who takes delivery/possession of New Tires only for the purpose of transporting them to another Person in Ontario is not the First Importer of the Tires;

**Light Truck Tires** means Tires designed for light trucks as defined in Appendix A: *OTS Definition of Program Tires*;

**Medium Truck Tires** means medium truck Tires as defined in Appendix A: *OTS Definition of Program Tires*;

**New Tires** means all Tires Supplied with a new vehicle, or new replacement Tires or new additional Tires Supplied separately or with used vehicles, but does not include Used Tires or Retreaded Tires;

**OEM** means a manufacturer or First Importer of new vehicles for Supply in Ontario;

**OTS** means Ontario Tire Stewardship;

**Passenger Tires** means Tires designed for passenger vehicles as defined in Appendix A: *OTS Definition of Program Tires*;

**Person** includes an individual, partnership, joint venture, sole proprietorship, company or corporation, government (whether national, federal, provincial, state, municipal, city, county or otherwise and including any instrumentality, division, body, department, board or agency of any of them), trust, trustee, executor, administrator or any other kind of legal personal representative, unincorporated organization, association, institution, entity, however designated;

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

**Resident in Ontario** means either of the following: (i) having a published address in Ontario; or (ii) having a permanent establishment in Ontario for the purposes of the *Corporations Tax Act (Ontario)*;

**Retreaded Tires** means Used Tires which have been reconditioned for the purpose of extending the useful life of the Tires, including replacement of the tread rubber only or replacement of tread and sidewall rubbers;

**Rules** means these rules, and includes additional rules or amendments to these Rules from time to time, as published by OTS on its website;

**Steward** means a Person designated as such under Rule 2; and “Stewards” means more than one Steward;

**Steward’s Report** means a report prepared by a Steward and filed with OTS describing the aggregate amount of New Tires Supplied in the Data Period by the Steward and its Affiliates, containing the information required by Appendix B;

**Supplied** means:

- (i) sold or otherwise transferred (whether by transfer of possession or title);
- (ii) leased;
- (iii) donated;
- (iv) disposed of; or
- (v) otherwise made available or distributed

for use in the Province of Ontario, and includes an import of New Tires for a purpose set out in Rule 2(3)(b); **Supply** and **Supplies** have similar meanings;

**Tire Stewardship Fees** means the fees payable to OTS pursuant to Rule 4;

**Tires** means products comprised primarily of rubber for mounting on passenger vehicles, motorcycles, trucks, buses, mobile homes, trailers, aircraft, earthmoving, road building, mining, logging, agricultural, industrial and other vehicles to provide mobility, but does not include tires on or for toys, bicycles, personal mobility devices and commercial aircraft;

**Unbranded** means a Brand is not attached to or otherwise associated with Tires;

**Used Tires** means all Tires, including any part of a tire, that, for any reason, are not suitable for their originally intended purpose, but does not include Retreaded Tires.

## **2. Designation of Stewards**

For the purposes of determining which Person shall be designated as a Steward for New Tires, the following provisions shall apply, in the order in which they are set out. If two or more Persons are designated as a Steward pursuant to the following, the earlier provision shall prevail.

- (1) An OEM is designated as the Steward with respect to all New Tires on vehicles Supplied by the OEM;
- (2) A Brand Owner is designated as a Steward with respect to all New Tires:
  - (a) Supplied in the Data Period in respect of which it is the Brand Owner; and
  - (b) to which it has a Commercial Connection;
- (3) A First Importer is designated as a Steward with respect to all New Tires:
  - (a) Supplied in the Data Period of which it is the First Importer; or

- (b) of which it is the First Importer in the Data Period for use by it or its Affiliate in the Province of Ontario, other than New Tires purchased by an individual for personal use;
- (4) If there are Unbranded Tires Supplied in the Data Period, and if the manufacturer is Resident in Ontario, the manufacturer of such Tires shall be designated as the Steward for such Tires; otherwise the First Importer shall be designated as the Steward for such Tires;
- (5) If there are two or more Brand Owners for the same Tires Supplied in the same Data Period, the Brand Owner most directly connected to the manufacture of the Tires shall be designated as the Steward;
- (6) Where there is no Steward for a particular Supply of New Tires in Ontario, any Person who elects to become a Steward for such New Tires shall, upon obtaining the consent of OTS and executing an agreement to be bound by these Rules, be designated a Steward for such Supply.

### **3. Steward's Report**

- (1) Every Steward shall file its first Steward's Report with OTS on or before the later of:
  - (a) the last day of the first calendar month after the end of the first Data Period after the Commencement Date; and
  - (b) 90 days after such Steward is notified of the existence of these Rules and how to obtain a copy of them.
- (2) Stewards may amend a Steward's Report with the consent of OTS to correct information in the Steward's Report that is in error or to replace data previously reported.
- (3) Once it has filed its first Steward's Report, a Steward shall file a Steward's Report in accordance with the schedule as set out in Appendix C.
- (4) Notwithstanding the above OTS may require a Steward to file a Steward's Report for a specified time period within 30 days after OTS sends a written request to the Steward.
- (5) As set-out in Appendix C the first set of Stewards Report shall cover the period from the later of the Commencement Date and the date on which the Person first became a Steward.

### **4. Fees Payable**

- (1) Stewards shall pay Tire Stewardship Fees to OTS on New Tires Supplied in the relevant Data Period in accordance with Appendix C. The amount of Tire Stewardship Fees shall be calculated in accordance with the applicable Table of Tire Stewardship Fees in Appendix D by multiplying the number of units of each

type of New Tires included in the Steward's Report by the Fee Rate set out opposite such type.

- (2) Notwithstanding that a Steward has not received the notice in Rule 3(1), it is responsible for payment of Tire Stewardship Fees for all New Tires for which it is a Steward from and after the Commencement Date to the date on which it receives such notice
- (3) OTS may provide a credit for Tire Stewardship Fees which are overpaid, or which are paid in respect of the same New Tires for which another Person has paid Tire Stewardship Fees.
- (4) A Person described in any provision of Rule 2 who receives a Supply of New Tires from a Person who may be a Brand Owner, First Importer or OEM (the "provider") must ensure that the provider is a Steward with an OTS identification number. The OTS identification number will be posted on the OTS website.
- (5) A Steward shall remit HST applicable to the Tire Stewardship Fee to OTS with each monthly remittance of the Tire Stewardship Fee.

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

- (1) Stewards who fail to pay Steward's Fees by the dates specified in Appendix C will be subject to a penalty calculated at 10% of Tire Stewardship Fees due and payable.
- (2) If the amounts reported in a Steward's Report are inaccurate, any deficiency in Tire Stewardship Fees resulting from such inaccuracies shall be immediately due and payable from the date of the filing of the correcting Steward's Report or the date the Steward first knew of such inaccuracy, whichever is earlier, and, if not paid within 30 days, will be subject to a penalty equal to 10% of such Tire Stewardship Fee deficiency.
- (3) Interest on the amounts payable under Rules 5(1) and 5(2) shall accrue from their respective due dates at the Base Interest Rate plus 3% per annum. In addition, a Steward shall pay all collection costs, including all proper and reasonable legal fees, incurred by OTS, whether or not an action or any other legal remedy has been commenced.
- (4) OTS may waive all or part of any penalty, interest or charges otherwise payable under this Rule 5.

## **6. Record Provision and Retention**

- (1) Upon request from OTS, Stewards shall promptly provide data used in the preparation of the Steward's Report, including calculation methodology, product data, internal audit reports, list of Brands reported and list of Brands excluded from report and such other information or data in the Steward's possession or control as may be reasonably requested by OTS to substantiate the accuracy of the Steward's Report.

- (2) A Steward shall retain records or, on receipt of written request, provide records at an address in the Province of Ontario to substantiate and verify the amount set out in its 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 OTS upon its request to examine its books and records to enable OTS to audit and inspect such records respecting a Steward's Report up to five years after the date of receipt of such Steward's Report by OTS.

## **7. Dispute Resolution**

If any dispute arises between a Steward and OTS as to the amount of New Tires 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 OTS and the Steward within 30 days after written notice of the dispute was first given, or as otherwise agreed upon.
- (2) If the parties are unable to resolve the dispute within the above period, the Steward and OTS shall, within 30 days thereafter, jointly select an arbitrator to arbitrate the dispute. If the Steward does not nominate an arbitrator within the 30 day period, OTS shall nominate the arbitrator. The arbitration shall be conducted in accordance with the *Arbitration Act, 1991*.
- (3) The arbitrator shall render a written decision on the dispute within 14 days after the arbitration hearing or submission. The decision of the arbitrator shall be final and binding on the parties and shall be subject to appeal only on questions of law and not on questions of fact, in accordance with Section 45 of the *Arbitration Act, 1991*, and shall be enforceable against OTS and the Steward, as the case may be, immediately on the issue of such decision to the parties to the dispute.

## **8. Interpretive Memoranda**

OTS may publish on its website non-binding interpretive memoranda on these Rules and how it proposes to administer them.

## **9. Publishing of Names**

- (1) OTS will provide all Stewards with an identification number.
- (2) The names and identification numbers of Stewards filing Steward's Reports will be posted on the OTS website.
- (3) OTS may post a list on its website of all Brands reported in Steward's Reports from time to time, and all OEM's, Brand Owners, First Importers and other Stewards associated with such Brands.

## **10. Notice**

Any notice, request or other communication from OTS to a Steward which is required or may be given under these Rules may be delivered or transmitted by means of electronic

communication, personal service or by prepaid first class postage to the Steward at a Published Address in Ontario and shall be deemed to have been received on the third day after posting and on the first day after the date of electronic transmission, in each case which is not a Saturday, Sunday or public holiday in Ontario.

## **11. Amendments to Rules**

These Rules may be amended by OTS from time to time, subject to any required contractual or regulatory approvals. Such amendments will come into effect and apply to all Stewards from and after the date of publication on the OTS website. The version of these Rules in effect at the time of a particular Supply, including the form of Steward's Report set out in Appendix B and the Stewards Fees set out in Appendix D, shall continue to apply to all New Tires which are the subject of such Supply, notwithstanding any subsequent amendments to these Rules.



## Appendix A: Tires Definitions

	Product Category	Definition
1)	Exempted Tires	<p>All tires with an overall tire diameter of less than 7" regardless of weight</p> <p>All tires in which the rubber content is greater than 50% (by weight) derived from Used Tires</p>
2)	On-Road Tires	<p><b>Passenger Tires, Small RV Tires, ST Trailer tires and Light Truck Tires and Temporary Spares less than 30 Kgs in weight</b>  Passenger tires are designed for use on passenger cars, light trucks, small RVs and multipurpose passenger vehicles (MPVs), including sport utility vehicles (SUVs) and crossover utility vehicles (CUV's), and to comply with Canadian Motor Vehicle Safety Standard (CMVSS No. 109).  The light truck tire category is tires designed for use on consumer or commercial light trucks, under 10,000 lbs. Gross Vehicle Weight, and comply with Canadian Motor Vehicle Safety Standard (CMVSS No. 119).  Codes found on the sidewall of light passenger and light truck tires are P (Passenger) and LT (Light Truck). Temporary spare tires are marked T (Temporary).</p> <p><b>Motorcycle, Golf Cart and All Terrain Vehicle Tires less than 30 Kgs in weight</b>  Includes all tires specifically designed for on/off highway motorcycles, motorcycle sidecars, motor bikes, mopeds, mini-cycles, golf carts and all terrain vehicles.</p> <p><b>Free Rolling Farm Tires less than 30 Kgs in weight</b>  Includes free rolling farm and implement tires up to 16" rim size used on farm equipment.</p> <p><b>Medium Truck Tires Less than 70 Kgs in weight</b>  Also commonly known as Commercial Truck Tires – Truck and Bus tires including Wide Base or Heavy Truck tires designed for truck/bus applications and Larger RV tires not marked "P or LT". All of which comply with Canadian Motor Vehicle Safety Standard (CMVSS No. 119).</p>

3)	Off-Road Tires	<p><b>Agricultural Drive less than 200 kgs in weight</b> Includes drive wheel tires used on tractors and combines and tree harvesting equipment. These tires are normally identified with a sidewall marking with suffix letters (R), or (HF) or (LS) and are 16.5" and up rim size. These tires are listed in The Tire and Rim Association Inc. annual yearbook Section 5 Agricultural.</p> <p><b>Industrial Forklift, Bobcat/Skid Steer Tires less than 250 Kgs in weight</b> Includes pneumatic and solid forklift tires, Bobcat/Skid Steer With a rim diameter greater than 16".</p> <p><b>Small Off The Road Tires less than 375 Kgs in weight</b> Sizes 1300Tires &lt; and = to 23.5R25 Rim Size</p> <p><b>Medium Off The Road Tires less than 700Kgs in weight</b> Above 23.5R25 to 33 inch Rim Size</p> <p><b>Large Off The Road Tires less than 1200 Kgs in weight</b> Above 33 inch to and including 39 inch Rim Size</p> <p><b>Giant Off The Road Tires 1200 Kgs or more in weight</b> Over 39 inch Rim Size</p>

# Appendix B

## ONTARIO TIRE STEWARDSHIP (OTS)

### TIRE STEWARDSHIP FEE RETURN\*

Revised: 10/18/11

<b>Registrant Name</b> (Operating name)		<b>Registration Number</b>	
<b>Reporting Period</b> (Calendar month in which tire sales occurred)	<b>Due Date</b>		
	The TSF Return and related payment are due <b>30 days after the end of the month following the Reporting Period</b> . Interest is payable on all overdue amounts. A Return <b>must</b> be submitted for every month, even if there were no TSF applicable sales in the Reporting Period.		
<b>SALES &amp; TSFs IN REPORTING PERIOD</b>			
Tire Types	# Tires Sold	TSF Rate Per Tire	\$ TSF Due
Passenger & Light Truck / Motor Cycle / ATV / Free Rolling Farm Tires	X	\$5.84 =	, . 0 0
Medium Truck Tires	X	\$14.65 =	, . 0 0
Agricultural Drive and Logger Skidder Tires	X	\$15.29 =	, . 0 0
Small & Large Industrial Tires	X	\$12.51 =	, . 0 0
Small Off The Road Tires	X	\$22.24 =	, . 0 0
Medium Off The Road Tires	X	\$97.30 =	, . 0 0
Large Off The Road Tires	X	\$104.34 =	, . 0 0
Giant Off The Road Tires	X	\$250.20 =	, . 0 0
<b>TOTAL TSF DUE</b>			, . 0 0

<b>HST @ 13%</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; height: 20px;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> </table>										
<b>TOTAL REMITTANCE PAYABLE</b> (TSFs + <b>HST</b> )	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; height: 20px;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> </table>										
<p><b>WHERE TO REMIT:</b></p> <p>A cheque or money order for the total amount should be made payable to <b>Ontario Tire Stewardship</b>, attached to this TSF Return, and forwarded to the following address:</p> <p style="text-align: right;">Note: Nil Returns can be faxed to <b>866-884-7372</b></p>											
<p><b>CERTIFICATION:</b></p> <p>I certify that the amounts indicated above represent an accurate and complete account of the Tire Stewardship Fees that the Registrant is required to remit for the reporting period indicated. OTS is entitled to examine the Registrant's records relating to sales of new tires and the remittance of the Tire Stewardship Fees.</p> <p><b>Authorized signature:</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"> <div style="width: 45%;"> <p>_____</p> </div> <div style="width: 50%;"> <p><b>Date:</b> _____ / _____ / _____</p> <div style="display: flex; justify-content: space-around; font-size: small;"> <span>Month</span> <span>Day</span> <span>Year</span> </div> </div> </div>											

GST #: #####

**\*NOTE: This TSF Remittance form is included as a SAMPLE only. Stewards are encouraged to utilize the on-line reporting system accessible through [www.ontariots.ca](http://www.ontariots.ca), or to download the current form posted on the website for their actual TSF Remittance reporting.**

## Appendix C

### Payment and Reporting Schedule

Payment and reporting schedule will be monthly. The reporting schedule will depend on when a Steward is notified.

Monthly Data period	Data period end date	payment deadline
First month after Commencement Date	Last day of first month	30 days from last day of first month
Second month after Commencement Date	Last day of second month	30 days from last day of second month
Etc.	Etc.	Etc.

Obligated Stewards are required to file a Steward's Report for each Data Period following the Commencement Date by the date outlined in Rule 3 and then the regular schedule of filings and payments shall apply.

***Stewards who fail to pay Tire Stewardship Fees as set out in the instalment schedule above shall pay in addition:***

- A penalty of 10% of the Tire Stewardship Fees due and payable.
- Interest at the Base Interest Rate plus 3% on any outstanding balance due.

## Appendix D

### Table of Fees: Effective March 1, 2012

TSF per Tire by Type			
Tire Type	PTEs / Tire	TSF / PTE	TSF / Tire
<b>Passenger &amp; Light Truck Tires</b>	1	\$5.84	\$5.84
<b>Medium Truck Tires</b>	5	\$2.93	\$14.65
<b>Agricultural Drive Tires</b>	3.5	\$4.40	\$15.29
<b>Small &amp; Large Industrial</b>	11	\$4.40	\$49.10
<b>Small Off The Road Tires</b>	20	\$4.40	\$87.30
<b>Medium Off The Road Tires</b>	87	\$4.40	\$381.83
<b>Large Off The Road Tires</b>	93	\$4.40	\$409.11
<b>Giant Off The Road Tires</b>	223	\$4.40	\$981.86

## Table of Fees: Effective January 1, 2011 – February 28, 2011

Tire Type	PTEs / Tire	TSF / PTE	TSF / Tire
PL/T Tires	1	5.84	5.84
MT Tires	5	2.93	14.65
Agricultural Drive and Logger Skidder Tires	11	1.39	15.29
Small & Large Industrial	9	1.39	12.51
Small Off The Road Tires	16	1.39	22.24
Medium Off The Road Tires	70	1.39	97.3
Large Off The Road Tires	75	1.39	104.25
Giant Off The Road Tires	180	1.39	250.2

## Table of Fees: Effective September 1, 2009 - December 31, 2010

Tire Type	PTEs / Tire	TSF / PTE	TSF / Tire
PL/T Tires	1	5.84	5.84
MT Tires	5	2.93	14.65
Agricultural Drive and Logger Skidder Tires	11	1.39	15.29
Small & Large Industrial	9	1.39	12.51
Small Off The Road Tires	16	1.39	22.24
Medium Off The Road Tires	70	1.39	97.3
Large Off The Road Tires	75	1.39	104.25
Giant Off The Road Tires	180	1.39	250.2