

Consumer Protection Division



Consultation Paper: Direct Sellers Act and Regulations October 25, 2021

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The purpose of this letter is to seek input, comments, and feedback from stakeholders regarding the initiative to make direct selling activities a part of *The Consumer Protection and Business Practices Regulations* [Regulations]. The Government proposes to pass regulations that will replace *The Direct Sellers Act* and *The Direct Sellers Regulations*, which will be repealed. *The Consumer Protection and Business Practices Act* [Act] was passed in Saskatchewan in spring 2013. Part VII of the Act permits regulations dealing with various types of business licensing in Saskatchewan. One of those business types is direct sellers.

The proposed regulations will carry forward many of the current provisions in *The Direct Sellers Act* and *The Direct Sellers Regulations*. However, several key changes are also being proposed to keep the regulations consistent with current licensing requirements for other businesses in Saskatchewan and to address issues that have arisen in the direct selling industry. The proposed changes upon which stakeholder feedback is being sought are outlined below. If, as a result of feedback, it is determined that additional issues should be addressed, the Government will consider potential measures to address those issues as the regulations are finalized.

How to Respond

Your input is important. We welcome your answers to the consultation questions and any added input or suggestions you may wish to offer. We understand that not all topics are relevant to every individual or organization. Please provide concrete examples or evidence to support your suggestions where possible.

This consultation document asks questions where you can respond by checking boxes to express your views and by providing explanations or alternative options in free-form spaces.

You may download this paper and submit your completed responses by mail or email. You also may submit any feedback to us without using the consultation questionnaire package.

Please provide your comments by December 20, 2021, by emailing DSConsultations@gov.sk.ca or by mail to:

Direct Selling Consultation
Financial and Consumer Affairs Authority
Consumer Protection Division
Suite 601, 1919 Saskatchewan Drive
REGINA SK S4P 4H2

When responding, please provide your name and contact information such as an email or mailing address.

Name/Organization

Contact Information

Please also check a box to indicate whether you comment primarily as a:

- Business
 - Business Association
 - Consumer
 - Consumer Association
 - Academic
 - Other – You may enter your answer here
-

Thank you for taking the time to review these proposals. If you have any questions about this consultation, please email: DSConsultations@gov.sk.ca

Privacy Statement

The Financial and Consumer Affairs Authority of Saskatchewan may make public some or all of the submissions received, including personal information, the name of the organization associated with a particular submission, and the name of any individual submitting on behalf of the organization. By providing a submission, you are consenting to us publishing it in full without any redaction, except if you expressly request in writing that it or any portion of it be kept confidential. Submissions received through this consultation are subject to *The Freedom of Information and Protection of Privacy Act [FOIP Act]*. As such, all submissions may be subject to disclosure when a person makes an access to information request under the FOIP Act.

Key Amendments

1. Enhanced Disclosure for Certain Transactions

We are considering requiring a mandatory cover page and enhanced disclosure requirement for direct sale transactions involving the sale or lease of restricted products or services, which will include furnaces, air conditioners, windows, water heaters, water purifiers, water softeners, filtration systems and non-portable air cleaners, non-portable air purifiers, and bundles of these good and services (such as HVAC systems).

- This amendment will require the direct seller to provide the consumer prior to the sale with a disclosure cover page that comes from the Financial and Consumer Affairs Authority (the “FCAA”) and will form part of the contract. The disclosure cover page may include enhanced disclosure going beyond *The Cost of Credit Disclosure Act, 2002, SS 2002, c C-41.01*, including the following information:
 - the transaction may be notably more expensive than alternative means of obtaining the same product;
 - suppliers are likely to register a security interest (commonly known as a lien) on the goods, and they may also register a notice of security interest on the title of the home;
 - in addition to the payments, clear disclosure of the overall cost of the transaction including term, APR, and cost of credit, as well as any cancellation fees, penalties, or other charges that would have to be paid for terminating the contract early;
 - a cancellation form that the consumer may use to give written notice that the consumer wants to cancel the agreement;
 - an additional reminder regarding the buyer's right to cancel without reason or costs at any time up to 10 days after entering into the contract; and,
 - a statement that indicates that any contract that violates these rules is considered void, and the consumer may keep the products and services without any obligation related to their use or disposal.
- The direct seller will also be required to ensure that the consumer signs and dates the disclosure cover page.

For Discussion:

Question # 1A: Do you agree with the proposed changes?

- Yes
- No
- Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 1B: What are the administrative costs for direct sellers associated with implementing this proposal, if any?

Question # 1C: What are the risks to consumers, if any, that are not addressed by this approach, and how can those risks be mitigated?

Question # 1D: Another option is to provide an extended cooling-off period, such as 20 or more days, for these types of transactions. What are your views on this?

Question # 1E: Are there alternatives to these proposed changes that the Government should consider? If yes, please explain.

2. Requiring criminal record checks

- This amendment will require applicants for a direct seller's licence to provide, as a part of their application, a criminal record check dated no earlier than three months before the date of the application.
 - If the application is made on behalf of a corporation, criminal record checks must be submitted for all directors and officers of the corporation who are responsible for the operations of the applicant in Saskatchewan.
 - In the case of a partnership, criminal record checks must be submitted for all partners who are responsible for the operations of the applicant in Saskatchewan.
 - In the case of a sole proprietorship, a criminal record check must be submitted for the sole proprietor.
- Additional amendments will require licensees to provide updated criminal record checks every five years.
- The criminal record checks and update amendments are consistent with other regulations for licensees licensed pursuant to the *Act* (e.g. vehicle dealers).

For Discussion:

Question # 2A: Do you agree with the proposed changes?

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question #2B: What alternatives, if any, should the Government consider and why?

Question #2C: What other measures could be put in place to mitigate potential safety or financial crime risks to consumers of unsolicited direct selling at their home?

Question # 2D: What are the administrative costs for direct sellers associated with implementing this proposal, if any?

3. Licence cancellations and suspensions

- These amendments set out circumstances where licenses will be automatically cancelled or suspended.
- Licenses will be automatically cancelled when:
 - there is a material change in the membership of a partnership, the general partner of a limited partnership, or the directors of a corporation;
 - If the licensee is a salesperson, when the licence of the vendor that the salesperson represents is cancelled.
- Licenses will be automatically suspended, though not cancelled:
 - when a direct seller's business name pursuant to *The Business Names Registration Act* has lapsed or for some other reason has been removed from the record of registration;
 - when the registration of a corporation has lapsed or has for some other reason been struck from any register of corporations;
 - if the licensee is a salesperson, when the licence of the vendor that the salesperson represents is suspended; or,
 - When the name under which the applicant is incorporated or continued pursuant to *The Business Corporations Act* is changed and the licensee has failed to notify us in writing within 5 business days after the change.
- The director will retain discretion to provide relief from the above noted cancellations or suspensions upon application by the licensee when the relief is in the public interest.

For Discussion:

Question # 3A: Do you agree with the proposed changes?

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 3B: Are there alternatives to this proposed change that the Government should consider? If yes, please explain.

4. Financial security

- These amendments will require an applicant for a direct seller's licence to provide financial security in amounts that vary depending on a variety of circumstances, including the number of salespeople associated with the direct seller and the nature of the direct sellers' business.
 - Financial security is already required for direct sellers. The amendments are intended to provide clarity with respect to the minimum financial security that will need to be provided.
- In general, the financial security requirements reflect the overall risk the direct seller poses to the consumers.
 - For example, a single direct seller that has no other salespersons will be required to provide financial security in the amount of no less than \$5,000 if the total price of goods and services on an average sale for the direct seller is less than \$100. The amount is increased to no less than \$10,000 if that same direct seller's average sale totals \$100 or more. The required financial security for these direct sellers is no less than double these amounts if the direct seller has salespersons.
 - As a second example, a direct seller whose business is the sale of home renovation goods and services, hearing aids, hearing instruments, vacuum cleaners, or natural gas, will be required to provide financial security in the amount of no less than \$25,000 (whether or not that direct seller has salespersons).
 - As a third example, a direct seller of restricted products such as home heating products, air conditioners, or water heaters will be required to provide financial security in the amount of no less than \$75,000 (whether or not that direct seller has salespersons).

For Discussion:

Question # 4A: Do you agree with the proposed changes?

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 4B: Are there alternatives to these proposed changes that the Government should consider?
If yes, please explain.

Question # 4C: What are the administrative costs to direct sellers associated with implementing this proposal, if any?

5. Identification cards

- These amendments will require vendors to provide identification cards to every salesperson who acts on behalf of the vendor.
- Since direct sellers and salespersons approach consumer homes without express invitation, requiring identification cards and requiring those identification cards to be displayed stands to increase consumer safety and help consumers more easily identify when direct sellers and salespersons are properly licensed.
- Each identification card will have to bear:
 - a photo of the salesperson;
 - the issue date of the card;
 - the salesperson's name;
 - the salesperson's signature;
 - both the vendor and salesperson's licence number;
 - the vendor's name;
 - the vendor's address; and,
 - the expiry date of the card.
- These amendments will require the salesperson to obtain the consumer's initials on the contract demonstrating that the consumer has acknowledged and confirmed that the consumer has been shown the direct seller's identification card.

For Discussion:

Question # 5A: Do you agree with the proposed changes?

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 5B: Are there alternatives to these proposed changes that the Government should consider?
If yes, please explain.

Question # 5C: What are the administrative costs to direct sellers associated with implementing this proposal, if any?

Question # 5D: What are the risks to consumers, if any, that are not addressed by this proposal and how can those risks be mitigated?

6. Changes to when contracts need to be in writing

- These amendments set out that direct sales contracts will be required to be in writing when the value of the contract exceeds \$200 or when the director feels it is in the best interests of the public to require a written contract.
- Any amendments to all direct sales contracts must also be in writing.
- If a written contract is not required, the Vendor will still be required to provide a “Statement of Cancellation Rights” to the consumer.

For Discussion:

Question # 6A: Do you agree with the proposed changes?

- Yes
- No
- Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 6B: Are there alternatives to these proposed changes that the Government should consider? If yes, please explain.

Question # 6C: What are the administrative costs to direct sellers associated with implementing this proposal, if any?

Question # 6D: What are the risks to consumers that are not addressed by this proposal and how can those risks be mitigated?

7. Contract duration limits

- These amendments will provide that a contract for the sale of goods cannot be longer than 3 years in duration, and a contract for the lease of goods cannot be longer than 5 years. Upon expiry of the contract, the contract will only continue from month to month and it will not be possible to automatically renew the contract for any other duration.

For Discussion:

Question # 7A: Do you agree with the proposed changes?

- Yes
- No
- Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 7B: Are there alternatives to these proposed changes that the Government should consider? If yes, please explain.

Question # 7C: What are the risks to consumers, if any, that are not addressed by in pursuing this proposal and how can those risks be mitigated?

Question # 7D - Are there certain goods or services that should be exempt from the duration limits? If so, why?

8. Cancellation of direct sales contracts

- Consumers will have the right to cancel a contract within 10 days after they receive either a written copy of the contract or the Statement of Cancellation Rights.
- If a contract is validly cancelled, the vendor must refund the consumer's money and return any trade-in. Once the consumer receives the refund, the consumer must return the goods unless they cannot be readily returned or undone.
- If the goods sold or provided by way of a service are delivered or installed during the 10 day cancellation period and are of a nature that they cannot be readily returned or undone by the customer, including if the goods have been installed in or affixed to a consumer's real property (such as furnaces, air conditioners, asphalt driveways, siding, etc.), upon valid cancellation by the consumer the consumer is entitled to retain the goods and is not responsible for any costs associated with the provision or installation of those goods and is entitled to receive back any money they paid to the vendor in respect of the transaction.
- The methods of cancellation will be set out in *Regulations*. Consumers will have a variety of methods to deliver their notice of cancellation (see below).

For Discussion:

Question # 8A: Do you agree with the proposed changes?

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 8B: Are there alternatives to these proposed changes that the Government should consider?
If yes, please explain.

Question # 8C: What are the risks to consumers, if any, that are not addressed by this proposal and how can those risks be mitigated?

9. Extended cancellation rights

The standard cancellation period is 10 days. However, a direct sales contract may be cancelled within one year after the day on which the consumer entered into the contract (known as extended cancellation rights) if:

- the goods or services contracted for are not delivered within 30 days of the date stated in the contract unless the consumer accepts the goods or services when delivered late.

Extended cancellation rights will also apply if:

- the vendor is not in compliance with licensing requirements at the time the goods or services were sold;
- the statement of cancellation rights is not provided to the consumer when required; or
- after a direct seller applies to the court for relief from any extended cancellation rights, the court nevertheless determines that extended cancellations rights should apply in the specific circumstances of the transaction.

For Discussion:

Question # 9A: Do you agree with the proposed changes?

- Yes
- No
- Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 9B: Are there alternatives to these proposed changes that the Government should consider?
If yes, please explain.

Question # 9C: What are the administrative costs to direct sellers associated with implementing this proposal, if any?

Question # 9D: What are the risks to consumers, if any, that are not addressed by this proposal and how can those risks be mitigated?

10. Incidental consequences of cancellation

- These amendments provide that cancellation of a direct sales contract will cancel the contract, any related financing agreement arranged by the direct seller and any security interest given by the consumer or a guarantor under a contract. This includes financing provided by 3rd parties and the corresponding security interests provided to those 3rd parties.
- Cancellation of a direct sales contract will also result in a requirement that any liens or security registered against a consumer, co-signor, or guarantor be removed by the party that registered the lien or security within 30 days of the cancellation of the contract.

For Discussion:

Question # 10A: Do you agree with the proposed changes?

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 10B: Are there alternatives to these proposed changes that the Government should consider?
If yes, please explain.

Question # 10C: What are the risks to consumers, if any, that are not addressed by this proposal and how can those risks be mitigated?

11. Method of Cancellation

- Consumers will have a variety of ways that they can notify the vendor that they wish to cancel the contract.
- Notice of cancellation is permitted in any way as long as it indicates the intention of the consumer to cancel the direct sales contract and permits the consumer to produce evidence that the consumer cancelled the contract on a certain date.
- Without limiting the generality of the foregoing, the proposal allows notice of cancellation to be sent to the vendor at the address set out in the direct sales contract or, if the consumer did not receive a copy of the direct sales contract or the address of the vendor was not set out in the direct sales contract, to any address of the vendor on record with the FCAA, Information Services Corporation (ISC) Corporate Registry, or to the director.

For Discussion:

Question # 11A: Do you agree with the proposed changes?

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 11B: Are there alternatives to these proposed changes that the Government should consider?
If yes, please explain.

12. Breach of licensing or identification requirements

- These amendments will provide that vendors are prohibited from taking any action against a consumer to enforce a contract if:
 - o the vendor or the salesperson were not licensed at the time the consumer entered into the contract (unless there were applicable exemptions from licensing);
 - o the salesperson failed to show the consumer the required identification and obtain the consumer's initials demonstrating that the required identification was shown; or
 - o the salesperson failed to provide the consumer with the required enhanced mandatory disclosure and failed to obtain the consumer's signature demonstrating that the required enhanced mandatory disclosure was provided to the consumer.

For Discussion:

Question # 12A: Do you agree with the proposed changes?

- Yes
- No
- Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

Question # 12B: Are there alternatives to these proposed changes that the Government should consider? If yes, please explain.

Question # 12C: What are the risks to consumers, if any, that are not addressed by this proposal and how can those risks be mitigated?

Other

Please use the space below to provide other comments or recommendations that should be considered to:

- Reduce administrative burden at the place of business;
 - Reduce administrative burden in the day-to-day operations of the licensee;
 - Protect consumers; and,
 - Enhance licensee compliance and improve regulatory efficiency.
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Please note that if amendments relating to these proposals are passed, it is intended that direct sellers will be given notice to allow time for them to bring themselves in compliance with those changes.

Thank you for your contributions, and we look forward to your response.

Denny Huyghebaert
Executive Director, Consumer Protection Division
Financial and Consumer Affairs Authority of Saskatchewan