



## **FACT SHEET: Analysis of Federal Trade Commission Proposal to Update Contact Lens Rule**

- *Adds Strong Consumer Rights Provision to Address Repeated Failure of Many Optometrists to Release Prescriptions*
- *Rejects Almost Every Proposal by AOA and Contact Lens Manufacturers to Weaken Consumer Protections*
- *Undermines Arguments for Anti-Consumer CLCHPA Bill (S. 2777 and H.R. 6157)*

On November 10, 2016, the Federal Trade Commission (FTC) issued [proposed changes](#) to its Contact Lens Rule, the regulatory framework that implements the landmark Fairness to Contact Lens Consumers Act of 2003 (FCLCA). The FTC's action followed the agency's thorough review of the Rule, which included a year-plus-long examination of over 660 comments and numerous studies, surveys and medical evidence.

The most significant proposed change included the addition of a strong consumer rights provision to address the repeated failure of many optometrists to provide consumers with a copy of their contact lens prescription as required by law.

In explaining its proposal, the FTC also rejected almost every proposal and argument made by the American Optometric Association (AOA), contact lens manufacturers and their joint lobbying group, the Coalition for Patient Vision Care Safety. Throughout its proposed rulemaking, the FTC repeatedly noted that these groups failed to provide empirical evidence or data to support their claims, and instead provided only hypothetical examples and anecdotal stories. Notably, since many of these same rejected ideas were included in the misleadingly-named Contact Lens Consumer Health Protection Act of 2016 (CLCHPA, S. 2777 and H.R. 6157), the FTC's analysis undermines any justification for the anti-consumer bill and highlights why it is so unnecessary.

The key findings and conclusions in the FTC's proposed rulemaking are as follows:

### **Requires Signed Acknowledgement of Prescription Release**

To address the repeated failure of many optometrists to release prescriptions to consumers following a contact lens fitting, the FTC is proposing to require optometrists to obtain a signed acknowledgement from patients after providing a prescription, and to keep that acknowledgement on hand for three years. This requirement will provide the FTC with a means to track those who are failing to follow this procedure and take action on behalf of consumers' rights when a case warrants.

Under current law, the FCLCA, optometrists are required to automatically provide prescriptions to consumers at the time of their lens fitting, whether or not the consumer asks for it, so that the consumer can take the prescription to purchase contact lenses from alternative, often lower cost, retailers, if they so choose. In its proposed rulemaking, the FTC noted that the weight of evidence indicated that "*compliance with the automatic prescription release provision could be substantially improved.*"

In explaining its decision, the FTC stated: *"The Commission believes such a provision will help inform patients of their right to their prescriptions, increase the number of patients who receive their prescriptions and, consequently, increase the number of purchases made with initial presentations of complete and valid prescriptions, thus reducing the number of verifications by third-party sellers. The addition of a signed acknowledgment requirement accomplishes the desired objectives with little increased burden on prescribers."*

### **Rejects AOA and Manufacturer Health Claims**

The FTC dismissed claims made by the AOA and manufacturers about health concerns from purchasing lenses through alternative retailers, stating *"the Commission has not seen reliable empirical evidence to support a finding that such sales are contributing to an increased incidence, or increased risk, of contact lens-related eye problems."*

And after reviewing all of the medical studies provided by the AOA, the FTC further concluded that *"they are not sufficient to reliably demonstrate that purchasing lenses online is a risk factor, or that online purchasers are at a higher risk of developing microbial keratitis or any other ocular complication."* This FTC conclusion is consistent with numerous medical studies that have found no connection between eye health problems and the location where lenses are purchased.

### **Rejects Argument that "Loopholes" in Current Rule Are Allowing Unsafe Practices**

The FTC dismissed arguments made by the AOA and others that the current Contact Lens Rule includes "loopholes" that are allowing or encouraging unsafe practices, such as the purchase of lenses with expired or invalid prescriptions, risky wear and care practices or avoiding regular eye examinations.

In rejecting these arguments, the FTC noted that commenters *"did not include any empirical evidence showing that the passive verification mechanism has actually resulted in the renewal of expired prescriptions"* and *"did not present any data showing that patients are not visiting their eye care practitioners as a result of the passive verification mechanism (or any other Rule provision)."* The FTC also noted that *"[o]ther examples of patient harm identified by commenters were either hypothetical or anecdotal (such as case reports about the experiences of individual patients)."*

The FTC further noted that, despite commenter claims of widespread problems, industry data shows that only 16% of contact lenses are currently purchased from online retailers, implying that health concerns are being overstated or misinterpreted as a problem stemming from online sales.

### **Rejects AOA and Manufacturer Proposals to Weaken Consumer Protections**

The FTC rejected a series of proposals made by the AOA, contact lens manufacturers and the Coalition for Patient Vision Care Safety. These proposals would have gutted the consumer protections in the FCLCA, making it much harder for consumers to purchase lenses from alternative retailers. Notably, since many of these same rejected ideas were included in the anti-consumer CLCHPA bill, the FTC's analysis undermines any justification for the bill and highlights why it is so unnecessary.

#### *Rejects change that would allow optometrists to block sales by asking a question*

The FTC rejected a proposed change to the prescription verification process that would allow optometrists to block a sale to an alternative retailer by simply asking a question or

expressing a vague concern, stating: "[T]he Commission believes that such a requirement would undercut the [FCLCA's] passive verification framework. Such a mechanism could conceivably allow any prescriber to lodge a concern or question and thereby halt the passive verification mechanism."

Rejects proposal to allow optometrists to select method of communication

The FTC opposed a proposal to allow optometrists to select the method of communication alternative retailers must use in verifying a prescription, noting that the Commission had considered and rejected that idea in its initial rulemaking and specifically allowed for the retailer to determine the communication method. The FTC stated, "[T]he [FCLCA] does not permit prescribers to limit the communication mechanisms sellers may use to submit verification requests."

Coalition for Contact Lens Consumer Choice members have pointed out that allowing optometrists to select the method of communication would create an undue burden on retailers, who would be required to track the preferred communication method of thousands of optometrists across the country.

Rejects proposal to lengthen 8-hour period for verification

The FTC rejected the idea of lengthening the eight-business-hour time frame during which an optometrist must respond to a prescription verification request, stating: "[T]he Commission believes that the current eight-business-hour time frame is adequate for the vast majority of prescribers. Commenters put forth no empirical evidence that prescriptions are being improperly verified via passive verification due to prescribers not having enough time to respond, and cited no compelling changes in the marketplace that would justify extending the time frame beyond eight business hours. If anything, because of advances in technology, electronic communications, and record-keeping, eight business hours is as appropriate, if not more so, than when implemented in 2004."

The FTC further noted that it had addressed this issue in its initial rulemaking, explaining that "Congress recognized that consumers may be harmed if they face undue delays in receiving their contact lenses from a seller..."

Rejects restrictions on automated verification systems

The FTC declined to adopt proposals to restrict the use of automated prescription verification systems by alternative retailers, noting that such systems were authorized by the FCLCA and restricting their use "would thus seem to be contrary to Congressional intent to prohibit the use of this technology."

The FTC further noted that "[T]he Commission has not seen convincing evidence that the volume of automated verification calls they receive each day presents a burden that is not outweighed by the competitive benefits of the Rule, or that these practices frequently result in illegal sales of contact lenses."

Rejects requirements for live agents

The FTC rejected proposals to add a requirement for retailers to provide a live agent to receive calls from prescribers, noting that the FCLCA does not require live agents and commenters did not provide any evidence to justify the requirement given the burden it would add on retailers.

The FTC stated: *"No evidence was presented showing how often prescribers experience difficulty in obtaining reasonable access to a contact person at the seller's company. Likewise, the Commission did not receive evidence sufficient to show that the methods for communication offered by sellers do not provide prescribers with a reasonable opportunity to communicate with the seller about the verification request."*

#### Rejects adoption of quantity limits

The FTC rejected proposals to adopt quantity limits on customer contact lens purchases, noting that such limits could actually harm consumer eye health by causing consumers to run out of lenses and exceed recommended wear guidelines.

The FTC stated: *"[R]egardless of the evidence, or lack thereof, in the record to support the quantity limit proposals, the Commission believes that it would be difficult to administer the proposed limits, and that rather than increasing patient eye health and safety, such proposals could have the opposite effect. For example, if a consumer is running out of contact lenses and does not have time to see a prescriber promptly, there is a significant chance that the consumer will not adhere to the recommended contact lens replacement schedule and will instead try to 'stretch out' their lenses by re-wearing them until they can visit a prescriber. The failure to replace lenses is a well-documented cause of many contact-lens-related health issues. Absent empirical evidence that a substantial number of consumers are obtaining excessive amounts of contact lenses, or are not returning to their prescribers for eye examinations, the Commission believes that the risk of not replacing lenses outweighs the harm of consumers obtaining more lenses than strictly anticipated by the length of a contact lens prescription."*

#### **Clarifies That Consumers Are Entitled to Additional Copies of Prescriptions**

Due to the continued failure of many optometrists to provide prescriptions to consumers and alternative retailers acting as the consumers' authorized agents, the FTC clarified the Contact Lens Rule to state that consumers are entitled to additional copies of their prescription upon request, and that alternative retailers, when designated, are also entitled to receive copies of the prescription.

The FTC stated: *"[B]ecause the Commission believes that many prescribers are not providing patients with their prescriptions upon completion of their contact lens fitting, there is additional justification for ensuring that patients are able to obtain copies of their prescription when necessary. The Commission therefore believes that requiring prescribers to provide additional copies of contact lens prescriptions to patients upon request is consistent with the language and intent of the Act: providing prescription portability while protecting consumer health. Consumers with ongoing access to their prescriptions will be able to obtain the correct contact lenses from the seller of their choosing."*

#### **About the Coalition for Contact Lens Consumer Choice**

The Coalition for Contact Lens Consumer Choice serves as a voice for 41 million American contact lens consumers by advocating for continued consumer choice in the contact lens market. The Coalition opposes legislative and regulatory proposals at the federal and state levels that would limit the ability of consumers to purchase contact lenses from the retailer of their choice, whether online, in stores or over-the-phone.

More information about the coalition can be found at [KeepContactLensChoice.org](http://KeepContactLensChoice.org).