



January 30, 2017

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room CC-5610 (Annex C)
Washington, DC 20580

RE: Contact Lens Rule, 16 CFR Part 315, Project No. R511995

Dear Acting Chair Ohlhausen, Commissioner Ramirez, and Commissioner McSweeney:

On behalf of National Taxpayers Union's (NTU's) members across America, I offer the following comments in regard to proposed changes to the Contact Lens Rule, 16 CFR Part 315, Project No. R511995. NTU is supportive of the new provisions that the Commission has drafted; these additional policies would not only benefit consumers and foster more robust market-based competition, they would also encourage fiscally responsible government.

In a 2015 NTU Policy Paper, we cited the 2005 Contact Lens Rule and the Eyeglass Rule of 1978 as models for how the FTC can and should protect consumers while supporting economic freedom:

Some 30 years ago Timothy J. Muris, the FTC's then-Director of the Consumer Protection Bureau, analyzed a spate of FTC rulemaking proceedings subsequent to the Magnuson-Moss Act, and found that most were withdrawn, made obsolete, or delayed.

Muris compared and contrasted several of these rules, concluding that most failures stemmed from two factors: 1) A lack of clear theory to show how a given practice violated the law and why a government remedy is superior to the market; and 2) A lack of 'systematic projectable evidence' that confirms, not just coincides with, the theory.

Muris cited two cogent examples to illustrate his point – proposed rules that would lift states' restrictions on advertising for eyeglasses and regulations disclosing funeral home pricing. In the former case, the FTC relied on systematic projectable evidence that states with advertising prescriptions had 'significantly higher prices' than those offering consumers more access to information. In the latter, the FTC plowed ahead with requiring price disclosures via telephone and point of sale, relying on 'no more than a score of anecdotes' in a funeral industry with (at that point) some 2 million transactions a year.

Yet, allowing consumers greater freedom to shop for eyewear needs has also served taxpayers well. Local, state, and federal governments face massive cost inflation in their health care programs. Medicare and Medicaid alone have incurred trillions of dollars in future liabilities, while hundreds of billions more are at stake with government employee insurance programs. To give just one example, taxpayers cover more than 70 percent of the premium cost associated with the Federal Employees Health Benefits Program. At the state and local level, the share can be even higher.

Without sensible rulemakings, civilian government and military contact lens consumers, faced with more hurdles or fewer service options, will exert a heavier fiscal drain on insurance. And while Medicare and Medicaid do not provide for online lens purchases, the stifled development of new examination and purchasing venues will impact other areas of health care delivery. At the same time, citizens who might be deterred from maintaining their eye care because of more onerous procedures for purchase could eventually suffer health problems that will rack up more Medicare and Medicaid expenses.

For these reasons, NTU and its members are pleased that the FTC is taking a proactive approach to ensure that the Contact Lens Rule will continue to operate as intended. We applaud the FTC's decision to avoid relying on the optometry industry's anecdotal claims about health issues associated with online purchases – and in the process, avoid repeating the tarnished history surrounding FTC's funeral industry regulation. Instead, the agency methodically examined the evidence, and recognized that the process whereby customers automatically obtain a copy of their prescription should be improved. The FTC's proposal for tracking this transaction point seeks to minimize recordkeeping headaches while providing greater assurance that the original intent of the Contact Lens Rule and the Fairness to Contact Lens Consumers Act is upheld. Our members are pleased with the direction the FTC is taking in this area of rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Sepp", written in a cursive style.

Pete Sepp, President