



April 6, 2018

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

RE: FTC 16 CFR Part 315 Public Workshop Examining Contact Lens Marketplace and Analyzing Proposed Changes To The Contact Lens Rule

The [Coalition for Contact Lens Consumer Choice](#) ("the Coalition") respectfully submits the following comments in response to the Federal Trade Commission's (FTC) request for comments on their Public Workshop Examining Contact Lens Marketplace and Analyzing Proposed Changes To The Contact Lens Rule held on March 7, 2018.

Please note that these comments are in addition to the comments that the Coalition submitted in January 2017 in support of the FTC's proposed update to the rule. Individual members of the Coalition and their employees and supporters have also submitted numerous comments, studies and other materials to the Commission over the past year in support of the proposed rule and in support of new technologies that help contact lens consumers save time and money by renewing their prescriptions online.

Who We Are

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 and strongly supports competition in the marketplace because it helps both consumers and taxpayers.

The Coalition represents retailers, contact lens wearers, consumer groups, good government advocacy organizations, optometrists and other eye care professionals, and members of the public with diverse perspectives. The Coalition's member organizations currently include: 1-800 Contacts, Americans for Tax Reform, Consumer Action, Citizen Outreach, Costco Wholesale, Institute for Liberty, Lens.com, LULAC, National Taxpayers Union, the National Hispanic Medical Association, and the Taxpayers Protection Alliance.

Key Points to Keep in Mind as the FTC Finishes Its Work on Updating the Rule

1) Please keep the proposed strong consumer rights provisions in the final rule. Don't weaken them. The FTC's proposal struck a good balance.

In the FTC's proposed rulemaking, the agency accurately noted that "compliance with the automatic prescription release provision could be substantially improved" and that the FTC's proposed change "is likely to spur more competition and innovation among contact lens sellers and manufacturers." Since the FTC issued that proposed rule, the American Optometric Association (AOA), the lobbying group representing optometrists, has been

working overtime to portray these consumer-centric reforms as overly-burdensome. Its claims about the proposed rule are self-interested and false.

It is clear from listening to the March 7 workshop and talking to our members across the country that the balance of power between contact lens consumers and optometrists is still not balanced or fair to consumers. Too much power still resides with optometrists who can prescribe and sell contact lenses at the same time without any meaningful choice by the patient. In the absence of a strong FTC rule and current law, there is no incentive for a prescriber to ever willingly give a patient their prescription.

We are concerned by what we heard at the workshop and read in the information that has been provided to the FTC about optometric practices and doctors who are blatantly ignoring the law. Despite nearly a decade under the law, consumers are still largely unaware that they are entitled to their prescription and can go somewhere else to have their prescription filled.

The key change proposed by the FTC – the addition of a requirement for optometrists to obtain a signed acknowledgement after providing a prescription to a consumer, and to keep that acknowledgement on file for three years – would help address the primary deficiency of the current system, that many optometrists routinely fail to automatically provide patients with a copy of their contact lens prescription. This requirement would give the FTC a means to track those who are failing to follow the prescription release requirement under FCLCA and to take action on behalf of consumers' rights when a case warrants. The requirement would add little additional burden on optometrists, many of whom must already meet state requirements to maintain records of eye exams for at least three years. The FTC appropriately notes that saving the form would “not take more than a few seconds of time, and an inconsequential, or *de minimis*, amount of record space.” What the FTC is proposing is a common sense, minimally-burdensome rule change that both optometrists and consumers can and should support.

Replacing this acknowledgement with a requirement to post signs in optometrist offices, as is required now under California law, simply won't work as an alternative, as the FTC found in its own informal survey of California optometrist offices. Consumer Action conducted a similar [survey](#) and also found almost no compliance with the California law in the California optometrist offices they visited.

It was disturbing to hear some of the speakers at the workshop representing optometrists and contact lens manufacturers who wanted the FTC to weaken the strong consumer provisions that the agency so carefully recommended in the proposed rule. All of the recent data we have seen from consumer groups and industry experts show that we need to strengthen consumer rights, not weaken them. We hope the FTC takes this opportunity to do even more to bolster enforcement of the rule and increase consumer education.

2) Please don't lengthen the waiting period for prescription verification from eight hours to two days as some were arguing in the workshop. This is too long to make patients wait for prescriptions to be fulfilled.

Instead of lengthening the amount of time a patient must wait to get their prescription verified, we should be looking for ways to help patients save even more time and money. The goal and the focus of the FTC's work should be around the question of how can we best serve patients and consumers and relieve burdens on meaningful choice. Unfortunately, during the workshop, much of the narrative being described by representatives of optometrists and contact lens manufacturers seemed to come from anecdotal stories, not

backed by empirical evidence, and focused on how hard it has been for prescribers and eye doctors. We feel this narrative is misleading.

3) Please continue to encourage doctors, patients and innovators to develop and use technology to help patients have better access to vision care and lower health care and vision care costs, and to help consumers know their rights when it comes to wearing and buying contact lenses and glasses.

We were troubled to hear the AOA and some of its allies at the workshop raise doubts about new technologies that are being developed around telemedicine, online prescription renewal, electronic medical records and even using technology to help speed up the process of the FTC's proposed signed acknowledgement forms. We believe that as long as patient privacy is maintained and protected, technology will help transform the industry and give millions more people access to cheaper, better care delivered in a more convenient way.

We appreciated the comments made by some of the medical professionals and health experts during the workshop who discussed the benefits this new technology is already delivering to patients across the country.

4) Please continue to reject the AOA and contact lens manufacturer health claims about the supposed dangers of buying lenses outside optometrist offices.

In the FTC's proposed rule, the agency appropriately rejected the health claims made by the AOA and contact lens manufacturers, noting that these claims were not supported by reliable empirical evidence. In the workshop, many of these rejected arguments were trotted out again by these groups. Time and again, the FTC has found no increased risk from buying contact lenses from alternative retailers, which is consistent with numerous medical studies that have found no connection between eye health problems and the location where contact lenses are purchased.

Conclusion

American consumers and taxpayers have strongly benefited from the FTC's Contact Lens Rule and the agency's work protecting consumer rights over the past decade. Throughout this rulemaking process and the workshop last month, the FTC has conducted an exhaustive, transparent and detailed look at all of the issues and aspects facing consumers when it comes to contact lenses.

Thus far, the FTC has taken a careful, consumer-focused and balanced approach to this issue. But we do need action and we need it quickly. Every day we delay in issuing the final rule is another day that a consumer doesn't learn about their rights or their ability to shop around for the best deal for them and their families. The Coalition for Contact Lens Consumer Choice urges the FTC to move forward with adoption of its proposed rule as soon as possible.

Thank you for this opportunity for us to offer our comments on this critical issue to American consumers and taxpayers.

Sincerely,

The Coalition for Contact Lens Consumer Choice