



July 26, 2019

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

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

The [Coalition for Contact Lens Consumer Choice](#) ("the Coalition") appreciates the opportunity to submit our comments on the Supplemental Notice of Proposed Rulemaking ("SNPRM") issued on May 28, 2019.

The Coalition is a truly unique organization, made up of groups and companies who compete against each other in the contact lens marketplace and in the marketplace of ideas; a bipartisan mix of consumer and taxpayer advocates, think tanks and companies, who have come together to serve as the voice for the more than 41 million Americans who wear contact lenses.

Our members include Americans for Tax Reform, Citizen Outreach, Costco Wholesale, Institute for Liberty, Lens.com, LULAC, the National Hispanic Medical Association, National Taxpayers Union, Progressive Policy Institute, R Street Institute, 1-800 Contacts, Consumer Action, and the Taxpayers Protection Alliance. While we have differing approaches to policy and politics, we all agree on the need for a strong, enforceable CLR that promotes competition in the marketplace and saves taxpayers money.

First, we would like to thank the FTC staff and leadership for their dedication and commitment over the past few years producing a strong Contact Lens Rule ("CLR"); a rule that protects the rights of consumers and taxpayers and promotes choice and competition in the contact lens marketplace. The Commission worked hard to gather evidence, listened to the suggestions of all parties involved, conducted a day-long workshop, and proposed a notice of supplemental rule making that balances the needs of patients, prescribers, and sellers.

There have been continual efforts to delay and weaken the final rule by those who have opposed the CLR and/or the Fairness to Contact Lens Consumer Act ("FCLCA") in the past. The FTC has consistently and appropriately argued throughout this process that more must be done to ensure competition and choice in the contact lens marketplace, as well as strengthen consumer and taxpayer protections.

As you know from the letters that the Coalition and each of our members have sent both collectively and individually to the FTC since 2005, we are strong proponents of the current rule. Below please find some key overall points that we would like to make about the need for a strong CLR and some specific points and questions about the SNPRM.

Why America Needs a Strong Contact Lens Rule

#1 - A strong Contact Lens Rule is necessary to ensure competition in the marketplace. The system is stacked against consumers without it.

With all the back and forth recently about how this proposed CLR could create burdens on prescribers, we believe that it is important to remember why the CLR was issued and to point out that without a strong rule mandating automatic prescription release, the contact lens market is stacked against consumers.

Unlike any other part of our health care systems, contact lens prescribers have the power to both prescribe and sell contact lenses to consumers, oftentimes before patients have the chance to even leave the examination room. The FCLCA enshrined the principle of mandatory prescription release as a way to counterbalance the power that prescribers have to sell to their patients and to give consumers a way to comparison shop in the marketplace and purchase lenses when and where they wanted. Yet over this past decade, we have seen that some prescribers have refused to follow the law and give patients copies of their prescriptions after eye exams or fittings. We have also seen in polling by several of our members (Consumer Action, 1-800 Contacts) that a majority of US consumers do not even know that they have the right to their own prescription.

In both the NPRM of 2017 and the SNPRM of 2019, the FTC protects competition and promotes consumer education by proposing a prescription release acknowledgment requirement to the CLR. This sends a powerful message to prescribers that they must do more to educate their patients about their rights and that they ignore mandatory prescription release at their own peril.

#2 - An affirmative acknowledgment of prescription release is an essential and critical tool for the FTC to enforce the law.

One of the major oversights in the current CLR is a way for the FTC to verify that prescribers are providing patients with copies of their prescriptions. One of the most powerful provisions of the FTC's proposed new rule is the requirement for prescribers to create a verifiable record, a signed acknowledgment by the patient. This acknowledgment proves that the prescriber provided the patient with a copy of their prescription immediately after a contact lens fitting or prescription renewal. Prescribers must keep a copy of this acknowledgment on file for three years.

This procedure would give the FTC a means to track those who are refusing to follow the prescription release requirement under the FCLCA and to take action on behalf of consumers when a case warrants. What the FTC is proposing is a common sense, minimally-burdensome rule change that optometrists, ophthalmologists, and consumers alike can and should support.

#3 - The FTC made clear that consumers are entitled to additional copies of their prescriptions

Another critically important provision in the new rule is the clear statement by the FTC that consumers are entitled to additional copies of their prescription upon request, and that alternative sellers, when designated, are also entitled to receive copies of the prescription.

Since the FCLCA first passed, the contact lens and glasses marketplace has been transformed. Consumers can shop for contact lenses and glasses at their optometrist's office, at their local big box store or neighborhood pharmacy, online, over the phone or through an app. They have a wide variety of choices when it comes to buying contact lenses but they also need to have copies of their prescription handy to take advantage of this opportunity to comparison shop.

This clarification by the FTC, that consumers are entitled to additional copies of their prescription, is critical for consumers due to the continued refusal of many prescribers to provide prescriptions to consumers and alternative sellers acting as the consumers' authorized agents. It will also reduce the time that consumers have to wait to receive contact lenses from alternative sellers and reduce errors by ensuring they have a copy of the patient's original prescription as well as reduce the use of a prescription verification system.

Comments on the Supplemental Notice of Proposed Rulemaking

We are glad to see the FTC maintain the requirement for affirmative acknowledgment of prescription release and reject the argument that patients are better served by prescribers posting signs.

While the FTC has given more leeway to prescribers about how they would set up and design a system of affirmative acknowledgment of prescription release in the SNPRM, the important thing is that prescribers are still required to have patients affirmatively acknowledge release. The acknowledgments must be kept for three years. This is critical to increase enforcement of the law and to ensure that bad actors are identified quickly without inconveniencing those who are obeying the law.

We need a strong affirmative patient acknowledgment requirement to give the FCLCA and the CLR some teeth. Just requiring prescribers to post signs doesn't work. Consumer Action and some of our other members have tested the California state sign requirement and what they found was deeply troubling. Many offices in California simply ignored the law or posted minuscule signs in inconspicuous places. Another leading consumer advocate, Consumers Union, noted in its comment letter to the FTC that a signature requirement would be "far more effective in promoting and demonstrating compliance" than simply posting signs. There is no substitute for prescribers having patients affirmatively acknowledge they have been given a copy of their prescription and details about their rights as consumers.

We support digital prescriptions and the use of technology to help ensure patients get their prescriptions and are educated about their rights.

Many of the members of our Coalition are strong proponents of the need for more innovative and more patient-centric health care to bring down costs and improve efficiency. Providing patients with digital copies of their prescription will save both doctors and patients precious time and money. It makes it easier for patients to store prescriptions online or in the cloud and cuts down on the need to call or visit their prescriber to obtain new copies if they misplace the paper copy they received during their initial visits.

Millions of Americans use online health portals and receive protected emails from their prescribers to access information about their health every day. We support the FTC's efforts to encourage prescribers to issue digital copies and use technology to increase prescription release.

We do not support the idea of digital copies being given in lieu of physical copies.

While we welcome the FTC's call for prescribers to provide patients with digital copies of their prescriptions and support in concept the notion of patient portals, we have some concerns about how that technology would be designed and utilized. This is an issue especially for older Americans, Americans who are not native English speakers, and Americans who don't have ready access to the Internet or smartphones.

We would like for the FTC to ensure that patients are given the opportunity to receive both a hard copy and a digital copy of their contact lens prescription after each exam, in case the patient portal is too confusing or inaccessible or they somehow lose access to an online copy.

More work needs to be done to define what a patient portal is and to determine how patients and their designated agents can access their prescriptions easily.

Given the extreme reluctance and even refusal by many prescribers to provide copies of prescriptions in the first place, we are wary of the notion of portals without having the FTC first set some clear consumer guidelines. We would not want to see technology and portals being created that makes it harder, not easier, for a patient to access what is rightfully theirs: their prescription. We also worry that unscrupulous prescribers could use patient portals to confuse patients into thinking they must order contact lenses from their offices only.

We support the addition of a timetable of 40 business hours for prescribers to respond to an authorized seller's request for a copy of the patient's prescription.

While the initial proposed rule required prescribers to respond to requests from sellers for a copy of a patient's prescription, it did not give a specific timetable for them to respond by and made it virtually impossible to enforce this rule. This 40-hour requirement will help ensure that prescribers actually release prescriptions to designated sellers and do it more quickly, it will also ensure that prescriptions are more portable for patients, and that the process of getting a prescription from a prescriber is less burdensome for all parties.

We applaud the FTC's call for more research and conversation around brand choice and contact lenses.

The United States is one of the only places in the world where prescribers are the sole determiner of what brand of contact lenses patients can wear. Contact lenses are sold over the counter and even in some cases via vending machines in countries around the world. The same manufacturers in the US who insist on the notion that only prescribers can determine what brand of contact lens a customer can buy are the very same companies allowing customers in other countries to buy whatever brand of contacts they want. With the rising cost of health care, we are concerned about prescribers' ability to unilaterally control brand choice in the US and would like to have the FTC do more work to examine the anti-competitive nature of the contact lens market here in the US, most notably the close relationship between the AOA and contact lens manufacturers.

Conclusion

The FTC has challenged the entire contact lens industry to do more for consumers and taxpayers in their new CLR. It has asked prescribers, traditional and new sellers, and manufacturers to do more to promote and protect competition and choice and use all means at their disposal to educate consumers about their rights. The Coalition for Contact Lens Consumer Choice wants to thank the FTC for their diligent and thoughtful work. It is time to issue the Final Rule and make this a reality for American consumers.

Sincerely,

The Coalition for Contact Lens Consumer Choice

