

April 6, 2004

Sent by Email

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Federal Trade Commission/Office of the Secretary
Room 159-H, (Annex A)
600 Pennsylvania Avenue, NW.
Washington, DC 20580

To Whom It May Concern:

Costco Wholesale Corporation (“Costco”) submits the following comments to the proposed Contact Lens Rule:

Comment on Proposed Rule § 315.2 - Definition of *Contact lens prescription*.

Subsection (8) of this proposed rule requires that a contact lens prescription include the following: “In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and if applicable, trade name of equivalent brand name.”

At the present time, there is no mechanism by which private label contact lens prescribers or sellers can comply with the requirement to provide the “trade name of equivalent brand name,” and no mechanism by which other prescribers or sellers can verify the accuracy of any information. Private label contact lens manufacturers are not currently required to make information on “equivalent brand name” contact lenses available. Moreover, that information is not currently provided by such manufacturers to prescribers or sellers, nor is the information otherwise readily available through other sources.

For private label contact lens prescribers or sellers to comply with this requirement, the rules must also require private label contact lens manufacturers to provide information about all equivalent brand names. Given the current structure of the proposed rules, Costco suggests that an additional section be added to the rules which reads as follows:

§ 315. - Requirement for private label contact lens manufacturers.

A contact lens manufacturer who sells contact lenses under more than one brand must provide all prescribers and sellers with an accurate list of all brand name equivalents for each of its contact lens products. Such lists must be available on demand and shall be updated any time changes are made.

Comment on Proposed Rule § 315.2 - Definition of *Business hour* .

This proposed rule does not reflect the reality of current retail operations in the United States, which typically include Saturday business hours. By not accounting for such operations, the rule may inadvertently result in a “verified” prescription [*see* Proposed Rule § 315(c)(3)] that is not, in fact, accurate. In addition, the absence of Saturday hours makes calculating when the 8 hours have elapsed considerably more difficult.

Accordingly, Costco suggests that the first sentence in the definition of *Business hour* be revised to read as follows:

Business hour means an hour between 9 a.m. and 5 p.m. Monday through Saturday, excluding Federal holidays.

In addition, the last sentence in the definition of *Business hour* should be revised to read as follows:

For verification requests received by a prescriber during non-business hours, the calculation of “eight (8) business hours” shall begin at 9 a.m. on the next day that is not a Federal holiday.

Comment on Proposed Rule § 315.3(a)(1) and (2) - Availability of Contact Lens Prescriptions to Patients; and Comment on Proposed Rule § 315.5(b) - *Information for verification*

These proposed rules do not require that a written prescription include the signature of the prescribing optometrist or physician, or that a signed prescription from a prescriber be provided when appropriate. Costco believes that a signed prescription is the best way to ensure a prescription is accurate.

Accordingly, Costco suggests that Proposed Rule § 315.3(a) be revised to read as follows:

(1) Whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription which includes the signature of the prescribing optometrist or physician; and

(2) Shall, as directed by any person designated to act on behalf of the patient, provide a copy of a contact lens prescription which includes the signature of the prescribing optometrist or physician or otherwise verify the contact lens prescription by electronic or other means.

In addition, Costco suggests that Proposed Rule § 315.5(b) include the following additional requirement:

When a copy of an original contact lens prescription is being provided via electronic or other means, a copy which includes the signature of the prescribing optometrist or physician.

Comment on Proposed Rule § 315.5(b)(6) - *Information for verification*

This proposed rule requires a seller, as part of the information for verification, to provide “[t]he name of a contact person at the seller’s company, including facsimile and telephone numbers.”

Given that the verification process already anticipates that a prescriber has a means of “direct communication” with a seller, it is unclear why or to what end a seller should be required to provide the prescriber with the name of a particular “contact person” or that person’s facsimile or telephone number. Moreover, unless the rules intend to require a seller to employ a particular “contact person,” it is likely the case that many sellers will not be able to provide the name and contact information for a particular “contact person” with each prescription verification. Finally, if the point of verification is to verify a patient’s prescription, and all of the other information required by Proposed Rule § 315.5(b) has been provided, “contact person” information is superfluous.

Accordingly, Costco suggests that Proposed Rule § 315.5(b)(6) be eliminated.

Comment to Proposed Rule § 315.5(e) - *No alteration of prescription*

This proposed rule accurately restates the language of 15 U.S.C. § 7603(f), which allows for the substitution of equivalent brand name contact lenses from the same manufacturer. Some states do not allow such substitution. Costco believes this proposed rule should address that conflict by emphasizing that federal law supersedes any state law on the issue. Accordingly, Costco suggests the following sentence be added to the end of Proposed Rule § 315.5(e).

To the extent state law does not allow such substitution, the provision of 15 U.S.C. § 7603(f) supercedes any such state law.

Comment on Proposed Rule § 315.5(f)(2)(ii)(D) - *telephone bill records in Recordkeeping requirement.*

This proposed rule obligates a seller requesting verification retain copies of its telephone bills for three years, in addition to retaining telephone logs which describe the information communicated and the date and time that the information was received.

Given the telephone log requirement, it is unclear what if any information retained telephone bills will provide. First, such records typically do not contain information that would verify any aspect of the telephone logs. Second, in the event some sort of confirmation is necessary, the records of the telephone company itself will be the most helpful, and the information in the telephone logs will make requesting that information significantly easier. And third, given that a seller's telephone bills are typically handled in a manner completely unrelated to the dispensing of contact lenses, such a rule would impose an unnecessary and unduly burdensome requirement on sellers.

Accordingly, Costco suggests that Proposed Rule § 315.5(f)(2)(ii)(D) be eliminated.

Sincerely,
Costco Wholesale

A handwritten signature in black ink, appearing to read "Art Salas". The signature is written in a cursive, somewhat stylized font.

Art Salas
Assistant Vice President
Optical Operations