

MERCATUS CENTER
GEORGE MASON UNIVERSITY

REGULATORY STUDIES PROGRAM

Public Interest Comment on
*Contact Lens Rule: Notice of Proposed Rulemaking*¹

The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of the impact of regulation on society. As part of its mission, RSP conducts careful and independent analyses employing contemporary economic scholarship to assess rulemaking proposals from the perspective of the public interest. Thus, this comment on the Federal Trade Commission's proposed Contact Lens Rule does not represent the views of any particular affected party or special interest group, but is designed to evaluate the effect of the commission's proposals on overall consumer welfare.

I. Introduction

Legislation enacted in December 2003 directed the Federal Trade Commission (FTC) to issue regulations requiring that contact lenses must be sold pursuant to a prescription and that prescribers must release and verify prescriptions. The proposed rule would be similar to the existing FTC rule that requires eye doctors to give consumers their eyeglass prescriptions. The prescription release and verification requirements can be interpreted as measures to reduce the burden that the prescription requirement places on consumer choice.

The proposed rule closely mirrors the legislation. It also includes a number of definitions and items over which the FTC has some degree of discretion. These definitions could have a significant influence over how well the rule accomplishes its goals. The FTC could best promote consumer welfare by taking these four steps: (1) adopt a more flexible definition of "business hours," (2) define "completed communication" in a way that avoids unduly delaying sales to consumers who have valid prescriptions, (3) broaden the definition of "communication" to allow for future advances in technology, and (4) define "contact lens" to include only those lenses intended for vision correction.

¹ Prepared by Jerry Ellig, senior research fellow, Mercatus Center. This comment is one in a series of Public Interest Comments from Mercatus Center's Regulatory Studies Program and does not represent an official position of George Mason University.

II. Statutory Basis for Regulation

The principal elements of the proposed rule are specified in the Fairness to Contact Lens Consumers Act, signed into law on December 6, 2003. The act requires the FTC to issue implementing rules within 180 days of enactment. The legislation establishes several requirements intended to balance competition and consumer protection objectives in the sale of contact lenses:

- No one may sell contact lenses without a prescription, or advertise that contacts can be purchased without a prescription.²
- Contact lens prescribers must give the consumer a copy of the prescription when the fitting process is completed.
- No seller may alter a prescription, but sellers may substitute identical lenses produced by the same manufacturer, even if the lenses are sold under a different label or brand.
- A third party can sell lenses to a consumer if it obtains the consumer's prescription, verifies the prescription with the prescriber, or obtains a corrected prescription from the prescriber.
- When the consumer authorizes a seller to contact the prescriber, the prescription is presumed verified if the prescriber fails to respond within "8 business hours."
- Prescribers are prohibited from placing certain conditions on release or verification of prescriptions, such as requiring that the consumer first purchase lenses or pay an additional fee. Prescribers cannot require payment for the eye exam before releasing the prescription unless they also require immediate payment for an eye exam that shows no vision correction is necessary.
- A contact lens prescription expires in one year, unless state law specifies a longer period or the consumer's ocular health requires a shorter period, according to the medical judgment of the prescriber.

² The prescription requirement accomplishes directly through federal law what was previously accomplished indirectly through Food and Drug Administration (FDA) regulation. *Possible Anticompetitive Barriers to E-Commerce: Contact Lenses*, Report from the Staff of the Federal Trade Commission (March 2004), p. 8, available at <http://www.ftc.gov/os/2004/03/040329clreportfinal.pdf>. Referred to hereafter as "FTC Staff E-Commerce Report." See also Comments of the Staff of the Federal Trade Commission, Intervenor, In Re: Declaratory Ruling Proceeding on the Interpretation and Applicability of Various Statutes and Regulations Concerning the Sale of Contact Lenses, State of Connecticut, Department of Public Health, Connecticut Board of Examiners for Opticians (March 27, 2002), pp. 6-7. (Pagination is from HTML version at <http://www.ftc.gov/bc/v020007.htm>.) Referred to hereafter as "FTC Staff Comments."

A separate section of the legislation requires the FTC to study competition in the sale of prescription contact lenses. Issues to be examined include the incidence of exclusive relationships between lens prescribers or sellers and manufacturers, differences between online and offline lens sellers, effects of prescribing lenses by brand name or custom label, and the impact of the FTC's pre-existing eyeglass rule on competition. In an ideal world, this study would have been undertaken prior to passage of the other parts of the legislation – or at least in time to inform this rulemaking. The legislation, however, gives the FTC a 12-month deadline for the study but only a 180-day deadline for promulgating the rule.

III. Economic Analysis

A. Prescription Requirement

One might think that the primary purpose of the prescription requirement is to ensure that consumers receive the right power, size, and shape of lenses. If that were the only purpose, the requirement would be redundant for most consumers, because it is extremely difficult for a consumer to figure out what lenses to purchase without at least an initial consultation with an eye doctor. Anecdotal evidence suggests that some individuals may try to order contact lenses without ever having received a prescription – for example, by using information from a friend's box of lenses.³ Such individuals are probably rare. As the FTC staff has noted,

Consumers are generally unlikely to try to 'self-prescribe' vision-correcting contact lenses. Unless he or she is willing to bear the expense of purchasing and trying on countless brands, types, and powers of contact lenses, it is difficult for the consumer to find out what to order in the absence of an eye care practitioner's assistance, especially because an eyeglass prescription does not supply all of the information necessary to choose suitable contact lenses. It is thus reasonable to assume that a large majority of contact lens wearers have received a prescription for those lenses at some time.⁴

The legislation and proposed rule do not just require that the consumer must have received a prescription at some time; they require the consumer to have an unexpired prescription in order to purchase lenses. The "default" prescription length would be one year, unless state law specifies a longer time or the doctor believes a shorter time is warranted. FTC staff, the American Optometric Association, and lens manufacturers have noted that the primary purpose of requiring a current prescription is to induce

³ Federal Trade Commission Public Workshop, "Possible Anticompetitive Efforts to Restrict Competition on the Internet" (October 8-10, 2001) (Referred to hereafter as "FTC E-Commerce Workshop"), available at <http://www.ftc.gov/opp/ecommerce/anticompetitive/index.htm>, Cummings Testimony, Tr. p. 374.

⁴ FTC Staff E-Commerce Report, p. 11.

contact lens wearers to have periodic eye exams.⁵ The mere fact that a consumer purchases contact lenses from third parties – such as mass merchandisers, pharmacies, or Internet vendors – poses no additional health risk. Rather, the prescription’s expiration date is the “hook” that induces consumers to return to the eye doctor for another exam.

For consumers who schedule periodic eye exams as frequently as their doctors recommend, the prescription requirement is redundant. For consumers who would like to have eye exams less frequently than their doctors recommend, the requirement of a current prescription imposes an additional cost. These consumers are likely much more numerous than those who try to purchase lenses without ever having received a prescription. Prior to passage of the Fairness to Contact Lens Consumers Act, some stand-alone lens sellers did not require or verify prescriptions.⁶ Their existence suggests that many consumers would like to purchase lenses without returning to the eye doctor as often as the doctor recommends.

Most parties to the contact lens debate accept the requirement of a current prescription as necessary. But neither congressional testimony nor recent FTC proceedings on contact lens issues have produced solid evidence of a market failure that would justify the prescription requirement. A market failure would arguably exist if a significant number of consumers sought to purchase lenses without current prescriptions because they did not understand the relevant risks of putting off periodic eye exams. Many consumers have apparently sought to purchase contact lenses using expired prescriptions, but that does not necessarily mean that these consumers are ignorant of the risks. These consumers may simply be making an informed tradeoff, taking other uses of their time into account, which differs from what eye care experts recommend.

The prescription requirement is, of course, written into law. Given that the underlying market failure was assumed rather than proven, the FTC would do well to carefully scrutinize other aspects of the proposed rule to minimize the burden that the prescription requirement places on consumers.

B. Prescription Release and Verification

The purpose of the prescription release and verification provisions is to ensure that consumers, and lens sellers authorized by consumers, have access to prescriptions so that consumers can choose to purchase their lenses from someone other than the original prescriber. A consumer who receives a prescription can give or fax it to the seller of his or her choice. If the consumer loses the prescription, or purchases via mail order and does not have a fax machine, the consumer can direct the seller to contact the prescriber to obtain or verify the prescription.

⁵ FTC E-Commerce Workshop, Cummings Testimony, Tr. pp. 324, 364; Ostrov Testimony, Tr. p. 338; FTC Staff Comments, pp. 5-6; FTC Staff E-Commerce Study, pp. 8-12.

⁶ FTC E-Commerce Workshop, Cummings Testimony, Tr. p. 324; Ostrov Testimony, Tr. p. 337; Halpern Testimony, Tr. pp. 349-50.

Various interested parties have hotly debated the extent of the problem that these provisions are intended to remedy. Proponents of prescription release argue that because prescribers also sell lenses, they have incentives to refuse to release or verify prescriptions so that they can increase their own sales to their own patients. Anecdotal evidence of such behavior abounds.⁷ Stand-alone lens sellers claim that they have documented numerous instances in which eye doctors have refused to release or verify prescriptions.⁸ In the trade press, some eye doctors urge their colleagues to refuse to confirm prescriptions when contacted by a third party, and then make the sale themselves.⁹ Eyecare professionals, however, question how frequently such refusals occur.¹⁰ The studies mandated in the Fairness to Contact Lens Consumers Act might shed some light on this issue; unfortunately, the legislation requires that this rulemaking occur before the studies are finished.

As a matter of economic theory, the prescription release and verification requirements may be redundant in many cases. Eye doctors likely face significant competition from independent practices and (where permitted by state law) commercial optometry chains and mass retailers who have also entered the optometry business. If a large number of consumers want their prescriptions released or verified, a doctor who refused to do so in a timely fashion would likely lose business to other doctors with more consumer-friendly policies. Doctors who do not release or verify prescriptions might remain in business, as long as there are sufficient consumers who either have no desire to shop around for lenses or do not know that shopping is possible.

The prescription release and verification requirements primarily help less-informed consumers. These consumers might like to shop for lenses but are not aware that they can do so. Alternatively, some consumers may know that they can shop for lenses, but do not want to take the time to shop for a doctor who will release and verify prescriptions. It is not clear how numerous these consumers are. Nevertheless, the prescription release and verification requirements can best be understood as means of reducing the cost that the prescription requirement imposes on these consumers.

C. Presumed Verification

The “presumed verification” provision prevents a prescriber from blocking a sale by simply refusing to respond to a request for verification of a prescription. This provision strikes a balance between two different types of “error” that could occur in the sale of contact lenses.

⁷ Testimony of Peggy Venable, State Director, Texas Citizens for a Sound Economy, before the House Subcommittee on Commerce, Trade, and Consumer Protection (Sept. 9, 2003) at <http://energycommerce.house.gov/108/Hearings/09092003hearing1067/hearing.htm>.

⁸ FTC E-Commerce Workshop, Coon Testimony, Tr. pp. 329-330, 332, 359.

⁹ FTC E-Commerce Workshop, Coon Testimony, Tr. p. 332.

¹⁰ See, e.g., House Subcommittee on Commerce, Trade, and Consumer Protection, Cummings Testimony, pp. 1-2; FTC E-Commerce Workshop, Halpern Testimony, Tr. p. 347, 361.

The first and most obvious type of error is the sale of contact lenses to individuals who lack a valid prescription. Most of these consumers would probably be trying to purchase lenses with expired prescriptions.

The second type of error is denied or delayed sales to consumers who have valid prescriptions but need their eye doctors to verify them. These are consumers who may have lost their prescriptions, or perhaps they never obtained a copy because their last eye exam occurred before the prescription release legislation took effect (but recently enough that the prescription has not yet expired.) Another group of consumers in this category would be those who order lenses via phone or Internet and possess a copy of a valid prescription, but do not have access to a fax machine to send the seller a paper copy.

There are strong reasons to believe that some degree of Type I error is worth tolerating, because most of this error is likely to involve consumers who have already been informed about the health risks involved in wearing contact lenses. The vast majority of contact lens purchasers who need their prescriptions verified are surely individuals who have visited an eye doctor and received a prescription at some prior time. The doctor has, therefore, had the opportunity to educate the consumer about the importance of regular eye exams. The verification requirement thus protects consumers who willfully seek to purchase lenses with expired prescriptions in spite of their doctors' advice. Surely these consumers are in less need of protection than, say, an uninformed addict who wants to "self-prescribe" morphine. It makes sense that public policy would tolerate some sales to contact lens wearers whose prescriptions have expired, so that consumers whose prescriptions are up-to-date do not have to endure unduly lengthy waits for verification.

IV. Comments on Proposed Definitions

In addition to the congressionally-mandated provisions, the proposed regulation includes a number of definitions and items over which the FTC has discretion. This comment addresses several definitional issues on which the commission requested comments – specifically, the definitions of "business hours," "direct communication," and "contact lens."

A. Business hours

The proposed regulation defines "business hours" as hours between 9 a.m. and 5 p.m., Monday thru Friday, excluding federal holidays. For verification requests received outside of these times, the clock would start ticking at 9 a.m. on the following business day.

To see why the proposed definition could impose costs on consumers, one need look no further than the clarifying examples presented in the NOPR. If a consumer's order generated a verification request at 10 p.m. on Monday night and the prescriber did not respond, the seller would have to wait until 9 a.m. Wednesday to ship the lenses –

which likely means the consumer would not receive them until Thursday. A Saturday order could not be shipped until 9 a.m. on Tuesday if the prescriber failed to respond.¹¹ That order could not be shipped until 9 a.m. on Wednesday if Monday happened to be a federal holiday.

Such delay may not be justified by either economic reasoning or the goals of the statute. Presumably, the purpose of the “8 business hours” deadline in the statute is to give prescribers a reasonable amount of time to respond to verification requests. The problem is that different prescribers may keep widely different “business hours,” and so the proposed definition could give different prescribers wildly different windows of opportunity to respond to verification requests. Vision care practices located in shopping malls or “big box” retailers may offer extensive evening and weekend hours, to coincide with times when more customers can visit these locations. A solo practitioner may well do the same thing as a convenience to patients – or perhaps offer some evening or weekend hours but then close the office on some weekdays. An eye doctor with offices in multiple locations would likely split hours between locations. Given the diverse “business hours” that prescribers can keep, the proposed definition could give many prescribers more than eight business hours to respond to verification requests. In special situations, such as a solo practitioner who is semi-retired or closes the office for a vacation, the proposed definition could give the prescriber less than eight business hours.

There are several possible solutions to this dilemma. One option would be to adopt a broader definition of business hours. If comments in this proceeding reveal that prescriber business hours outside the proposed “9 to 5” window are commonplace, then the commission would do well to expand the number of hours in the day that qualify as business hours. Weekend hours could also be included if the evidence suggests weekend hours are also commonplace. Some federal holidays that do not seem to be widely observed in the private sector, such as Columbus Day, could also be counted as weekdays.

Another possibility is to eschew the “one size fits all” approach to defining business hours. Instead, the prescriber would have eight of *its own* business hours to respond to the verification request before the information the consumer gives the seller is presumed to be correct. Under this approach, the seller would have strong incentives to research and verify the prescriber’s business hours in order to comply with the regulation.

A final, hybrid approach would be to establish a default definition of business hours, ideally based on information about prescribers’ actual practices rather than the assumed 9 to 5 weekdays. In addition to this default, a seller who wanted to go to the trouble of verifying a prescriber’s actual business hours could use those hours to set the eight-hour verification deadline for sales to any of that subscriber’s patients. This approach would allow lens sellers to choose between the lower costs of complying with a “safe harbor” or the increased customer convenience associated with use of a prescriber’s actual business hours.

¹¹ NOPR, p. 5.

Some parties may argue that the proposed definition of business hours is too long, because not all prescribers' offices are open from 9 until 5, Monday thru Friday, excluding holidays. Consequently, some prescribers could miss the opportunity to respond to some verification requests, and as a result, some consumers would be permitted to purchase contact lenses without valid prescriptions. A shorter definition of "business hours" would tend to reduce these types of sales, or perhaps even prevent them altogether.

While logically coherent, this argument for a shorter definition ignores the fact that a shorter definition would impose even greater costs on consumers who have valid prescriptions and seek to obtain their lenses expeditiously. It would minimize "Type I" error – sale of contact lenses to consumers lacking valid prescriptions – while increasing "Type II" error – further delaying sales to consumers whose prescriptions are valid. Any approach that focuses only on the first type of error likely would reduce consumer welfare.

In addition, such an approach would also likely contradict the intent of the legislation. If Congress had wanted to minimize Type I error regardless of the cost to consumers, Congress could have simply mandated that all prescriptions must be positively verified by the prescriber, no matter how long it takes. The American Optometric Association proposed this in congressional hearings on the legislation, and many other witnesses discussed the merits of the issue.¹² The director of the FTC's Bureau of Consumer Protection took no position on the issue but urged Congress to make an explicit choice between "active" and "passive" verification.¹³ The legislation explicitly provides that a prescription is presumed verified if the prescriber does not respond after eight business hours. This result suggests that Congress intended to tolerate some Type I error in order to reduce Type II error.

For these reasons, the FTC would do well to weigh both Type I and Type II error when deciding how to define "business hours," rather than seeking to minimize Type I error only.

B. Direct Communication

The NOPR also defines "direct communication" as "completed communication by telephone, facsimile, or electronic mail."¹⁴ This definition raises two types of issues that affect consumer welfare.

¹² See, e.g., testimony of Dr. Pat J. Cummings, American Optometric Association, before the House Subcommittee on Commerce, Trade, and Consumer Protection (Sept. 9, 2003). Other witnesses who discussed the merits of active vs. passive verification at the hearing include Jonathan Coon (CEO, 1-800-Contacts) and Peggy Venable (State Director, Texas Citizens for a Sound Economy). See testimony at <http://energycommerce.house.gov/108/Hearings/09092003hearing1067/hearing.htm>.

¹³ See Testimony of J. Howard Beales III, Director, Bureau of Consumer Protection, FTC (Sept. 9, 2003) at <http://energycommerce.house.gov/108/Hearings/09092003hearing1067/hearing.htm>.

¹⁴ NPOR, p. 22.

First is the question of what constitutes a “completed” communication. As the NOPR notes, a completed communication may or may not include messages left on telephone answering machines (and presumably voice mail), and the definition may or may not require proof that a facsimile or e-mail was actually received. These could be especially controversial issues, given the history of accusations and counter-accusations hurled by stand-alone lens sellers and eye doctors. Lens sellers have claimed that doctors simply ignore or delay verification requests, while doctors claim that they receive undecipherable messages requesting verification, or that some sellers’ systems record the doctor as refusing to verify the prescription even if the doctor verifies it.¹⁵

The problem here is that any definition of “completed” communication that depends on discretionary action by the prescriber allows the prescriber to avoid verifying the prescription. On the other hand, defining the communication as “complete” when the lens seller sends it raises the possibility that prescribers might not always have the opportunity to verify prescriptions. In the first case, some consumers whose prescriptions are valid might not have them verified; in the second case, some consumers with expired prescriptions might be permitted to purchase lenses.

The choice of definition boils down to a choice between Type I and Type II error. For the reasons outlined in the above discussion of business hours, the FTC would likely promote consumer welfare by tolerating some Type I error in order to reduce Type II error. The possibility that e-mails could get lost in cyberspace, or that the prescriber’s fax machine could run out of paper, should not be permitted to drive a restrictive interpretation of what constitutes a “completed” communication.

The second issue involves the difficulty of listing all communication methods that are feasible now and will be feasible in the future. For example, if a lens seller and prescriber communicate via text messages on wireless telephones, do those messages count as telephone calls, electronic mail, or some medium of communication that does not satisfy the rule because it was not enumerated in the list? Similarly, if a lens seller creates a password-protected web site that allows prescribers to verify prescriptions, that seems like a form of direct communication – but it might not be in compliance with the rule, since the rule lists only telephone, facsimile, and electronic mail as forms of direct communication.

The problem is not that the list fails to include some communication options, but rather that the rule attempts to enumerate all permissible communication options. A more open-ended definition would make room for future developments in communication technology. Most future communication innovations are likely to involve electronic communication. (Smoke signals and carrier pigeons, for example, are unlikely to re-emerge as workable mass communications, and any requisite advances in telepathy would likely occur well after the proposed rule comes up for review in future years.) A

¹⁵ See, e.g., House Subcommittee on Commerce, Trade, and Consumer Protection, Cummings Testimony, pp. 1-2; FTC E-Commerce Workshop, Coon Testimony, Tr. pp. 329-330, 332.

workable definition, therefore, could include communication by telephone, facsimile, electronic mail, “*or other electronic means.*”

C. Contact Lens

The NOPR asks whether the rule should define “contact lens” to exclude “cosmetic” lenses that do not correct vision, since these lenses do not require a prescription. It makes little sense to require release or verification of prescriptions that do not exist. To avoid ambiguity, “contact lens” should be defined as “any contact lens for which state or federal law requires a prescription.”

Some commenters may urge the FTC to include these non-prescription lenses in the definition of “contact lens” as an indirect method of imposing a prescription requirement where none currently exists. These lenses appear to involve some of the same health issues as vision-correcting lenses, since cosmetic lenses also restrict oxygen flow to the cornea. Individuals who wear these lenses daily might benefit from pre-wear consultation with a doctor and periodic eye exams. Using this rulemaking to impose a prescription requirement, however, would require the FTC to make medical judgments that would vastly expand the scope of this rulemaking. A new prescription requirement for cosmetic lenses would best be addressed before Congress and the Food and Drug Administration, not in an FTC rulemaking.

V. Conclusion and Recommendations

Congress has explicitly decided that contact lens prescribers must release and verify prescriptions, and lens sellers must either obtain a copy of the prescription or have the prescription information verified by the prescriber. Nevertheless, the proposed rule could have different effects on consumer welfare, depending on how some of the terms are defined.

Although the legislation prohibits the sale of contact lenses without a prescription, the law does not prevent absolutely all such sales regardless of the impact on consumers. If a lens seller does not have a copy of the prescription, the law allows the lens seller to presume that the prescription information is verified if the prescriber fails to contact the seller within 8 business hours of the request for verification. This provision means that some consumers with expired prescriptions may nevertheless succeed in purchasing contact lenses. Although these consumers may harm themselves by doing so, the fact that they had valid prescriptions at one time means that they have visited an eye doctor in the past and are likely making an informed choice. Preventing all purchases by consumers with expired prescriptions could impose significant costs on consumers whose prescriptions are current but require verification (either because the consumer lost the prescription, or visited the doctor prior to enactment of the prescription release requirement, or ordered the lenses electronically without access to a fax machine). The law reflects a balance among these two consumer concerns, and so should the final rule.

Several changes in the rule’s definitions would help reduce the burden on consumers who seek to purchase contact lenses in compliance with the law:

- Adopt a more expansive definition of “business hours,” and/or allow lens sellers to use the prescriber’s actual business hours in setting the verification deadline.
- Define “completed” communication in ways that would prevent undue delay for consumers who have valid prescriptions but need them verified.
- Define “direct” communication in a way that includes potential future innovations in communication technology.
- Define “contact lens” to include only lenses for vision correction, which currently must be sold pursuant to a prescription.

**APPENDIX I
RSP CHECKLIST**

Element	Agency Approach	RSP Comments
1. Has the agency identified a significant market failure?	<p>The major provisions of the proposed rule were written into the authorizing legislation.</p> <p>Grade: NA</p>	<p>It is not clear whether a genuine market failure exists that justifies the prescription requirement. Economic theory suggests eye doctors face temptations to withhold release and verification of prescriptions, but also face competitive pressures to release and verify. The FTC is also required to study relevant issues, but the deadline for issuance of the rule occurs six months before the deadline for completion of the study. The FTC's study may shed light on the existence of market failure.</p>
2. Has the agency identified an appropriate federal role?	<p>FTC was directed to undertake this rulemaking by the Fairness to Contact Lens Consumers Act of 2003.</p> <p>Grade: A</p>	<p>Direct sale of contact lenses to consumers increasingly occurs in interstate commerce via Internet, telephone, and mail-order. Given that the federal prescription requirement exists, federal action to reduce its role as a barrier to competition is justified.</p>
3. Has the agency examined alternative approaches?	<p>The rule usually offers a single proposal addressing each element, but also repeatedly solicits suggestions for alternatives.</p> <p>Grade: C</p>	<p>Since alternatives are rarely listed, it is unclear how flexible the FTC will be in assessing alternatives.</p>

Element	Agency Approach	RSP Comments
4. Does the agency attempt to maximize net benefits?	<p>Costs of the paperwork burden are estimated for the prescription release, verification, and recordkeeping requirements.</p> <p>Grade: C</p>	<p>Questions accompanying the proposed rule frequently ask for comments on the costs and benefits of each provision. The FTC is clearly seeking reliable cost/benefit information in a situation where most existing information is anecdotal. More analysis of costs and benefits may be forthcoming in the FTC's contact lens study.</p>
5. Does the proposal have a strong scientific or technical basis?	<p>Prescription requirement reflects medical consensus that regular eye exams are necessary for contact lens wearers. Prescription release and verification address concern that prescriber's "gatekeeper" function thwarts competition.</p> <p>Grade: C</p>	<p>There is little doubt that the health risks exist, but much less evidence showing how frequently the health problems occur. No clear evidence shows whether there is a market failure justifying the prescription requirement, or if informed consumers are simply taking risks that medical professionals don't think they should take. In addition, it is not clear why competition among prescribers would not induce them to release and verify prescriptions promptly.</p>
6. Are distributional effects clearly understood?	<p>Not addressed.</p> <p>Grade: NA</p>	<p>Stand-alone lens sellers and prescribers who also sell lenses have clashed repeatedly over the issues involved in this rulemaking. There is little evidence, however, that the proposed rule redistributes wealth among groups of consumers.</p>
7. Are individual choices and property impacts understood?	<p>The principal effect of this type considered is the impact on small business. FTC certifies that the rules will not have a significant impact on a substantial number of small entities, but offers an Initial Regulatory Flexibility Analysis anyway.</p> <p>Grade: B</p>	<p>The purpose of the prescription release and verification provisions is to ensure consumer choice in the purchase of contact lenses. However, the legislation and the surrounding debate show no concern for preserving a fully-informed consumer's right to choose whether he or she can purchase lenses with an expired prescription; that's a risk the consumer is not permitted to take.</p>

