

# Comments to the Federal Trade Commission on the Proposed Contact Lens Rule Project No. R411002

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This memorandum responds to the Federal Trade Commission's request for public comments on the proposed Contact Lens Rule, to be promulgated under the authority of the Fairness to Contact Lens Consumers Act, 15 U.S.C 7601–7610 (Pub. L. 108–164), signed by President Bush on December 6, 2003. Following a brief introduction, I comment on specific questions posed in Section IX of the Commission's Notice of Proposed Rulemaking. My comments are intended to assist the Commission in designing a final rule that maximizes the benefits realized by consumers under the Act, which promotes competition in the sale of replacement contact lenses by requiring eye-care professionals unconditionally to release copies of prescriptions to their patients upon the completion of an ocular examination.

## 1. Introduction

The introduction of disposable “soft”, gas-permeable contact lenses in combination with improved manufacturing methods that minimize quality variation have revolutionized the marketplace for a product once made to order for each wearer. As a result of these innovations, contact lenses are now mass produced and numerous independent sellers are able to supply, off the shelf, lenses to eye-care professionals' precise specifications, including power, diameter and base curve. Competition, with its myriad benefits for consumers, has been promoted by the entry of Internet and mail-order retailers carrying large inventories of replacement lenses and able to fill customers' orders in a timely manner from remote locations.

Like the Ophthalmic Practices Rules before it, the proposed Contact Lens Rule recognizes that it is no longer in the public's interest for consumers to be limited to having their prescriptions filled only by the eye-care professional who evaluates their visual acuity and prescribes the appropriate corrective lenses. By requiring ophthalmologists and optometrists to release contact lens prescriptions to patients upon completion of the ocular examination, the Rule empowers consumers to purchase their lenses from the supplier of their own choice who offers the best combination of price, convenience and quality.

In designing a rule that achieves the pro-competitive purposes of the Fairness to Contact Lens Consumers Act, however, the Commission must take into account a fundamental characteristic of the contact lens marketplace that may inhibit the achievement of the Act's laudable goals. A conflict of interest exists between eye-care professionals and their patients owing to the fact that the former often sell the contact lenses they prescribe. Because ophthalmologists and optometrists who sell contact lenses have a financial interest in the prescriptions they write, they have

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