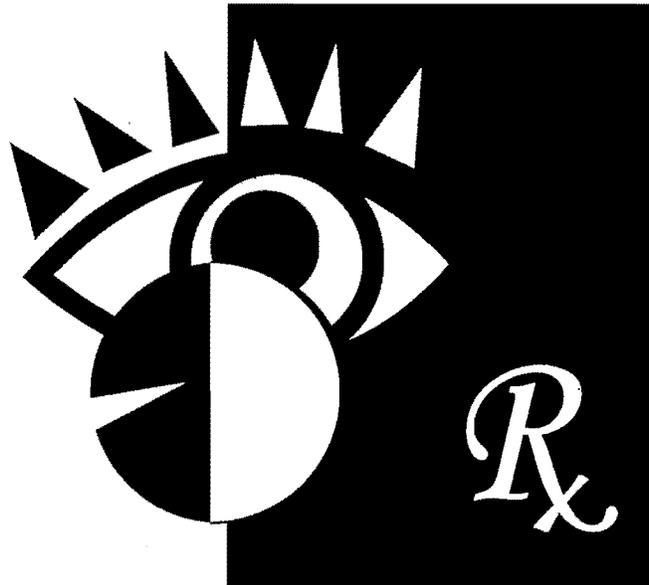


ATTACHMENT B

FTC FACTS for Business

The Contact Lens Rule: A Guide for Prescribers and Sellers



The Fairness to Contact Lens Consumers Act increases consumers' ability to shop around when buying contact lenses. The Act gives consumers certain rights, imposes duties on contact lens prescribers and sellers, and requires the Federal Trade Commission (FTC) to develop and enforce implementing rules. The FTC issued the Contact Lens Rule in July 2004 to spell out the Act's requirements.

The Contact Lens Rule requires prescribers to give patients a copy of their contact lens prescriptions at the end of a contact lens fitting, even if the patient doesn't ask for it. A patient who wants to buy contact lenses from another seller then may give the prescription to that seller. If a consumer doesn't give his prescription to that seller, the seller must verify the prescription before selling the lenses.

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The verification process works like this: the consumer provides prescription information to the seller, who then submits it to the prescriber in a verification request. The prescriber has eight-business-hours to respond. If the prescriber does not respond within the required time, the prescription is verified automatically, and the seller may provide contact lenses to the consumer.

FOR PRESCRIBERS

According to the Rule, “prescriber” refers to anyone permitted under state law to issue prescriptions for contact lenses — including ophthalmologists, optometrists, and licensed opticians who also are permitted under state law to fit contact lenses (sometimes called “dispensing opticians”).

Prescribers must:

- give a copy of the contact lens prescription to the patient at the end of the contact lens fitting – even if the patient doesn’t ask for it.
- provide or verify the contact lens prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers.

In any response to a verification request, prescribers must correct any inaccuracy in the prescription, inform the seller if it’s expired and specify the reason if it’s invalid.

Prescribers cannot require patients to:

- buy contact lenses
- pay additional fees or
- sign a waiver or release in exchange for a copy of the contact lens prescription.

Prescribers may require a patient to pay for the eye exam, fitting and evaluation before giving the patient a copy of the contact lens prescription, but only if the prescriber also requires immediate payment from patients whose eye exams reveal no need for glasses, contact lenses,

or other corrective eye care products. Proof of valid insurance coverage counts as payment for purposes of this requirement.

Prescribers cannot disclaim liability or responsibility for the accuracy of an eye examination.

Prescription expiration

The Rule allows prescribers to set prescription expiration dates – one year or more from the date the prescription is issued to a patient. If applicable state law requires a specific expiration period that is longer than one year, however, the prescriber must follow that law.

A prescriber may set an expiration date of earlier than one year only if that date is based on the prescriber’s medical judgment about the patient’s eye health. In these cases, the prescriber must document the medical reason for the shorter expiration date with enough detail to allow for review by a qualified medical professional, and maintain the records for at least three years.

FOR SELLERS

Sellers may provide contact lenses only in accordance with a valid prescription that is directly presented to the seller or verified with the prescriber. That means sellers may provide contact lenses when the consumer presents his prescription in person, by fax, or by email if the prescription has been scanned and attached to the email. The consumer also can authorize the seller to verify his prescription via “direct communication” with the prescriber. (See next page, “What is direct communication?”.)

Verification

When verifying a contact lens prescription, sellers must provide the following information to the prescriber using direct communication:

- patient’s full name and address
- contact lens power, manufacturer, base curve

or appropriate designation, and diameter when appropriate

- quantity of lenses ordered
- date of patient order
- date and time of verification request
- a contact person for the seller, including name, fax and phone numbers and
- a clear statement of the prescriber's regular Saturday business hours if the seller is counting those hours as "business hours" under the Rule.

Under the Rule, a prescription is verified if the prescriber:

- confirms its accuracy to the seller via direct communication
- informs the seller that the prescription is inaccurate and provides accurate information to the seller via direct communication or
- fails to communicate with the seller within "eight-business-hours" of receiving a complete verification request. During the "eight-business-hour" period, the seller must give the prescriber a reasonable opportunity to get in touch with the seller about the verification request.

Record-keeping

Sellers must maintain prescriptions presented to them, prescription verification requests, and prescriber responses to the verification requests. The Rule also requires sellers who count a prescriber's Saturday business hours to maintain a record of what those hours are and how the seller learned of them. Sellers must maintain these records for at least three years.

The Fine Print

What practices are not allowed?

Sellers must not:

- fill a contact lens prescription unless the seller has either received a copy of the prescription or verified the prescription as required by the Rule
- fill a contact lens prescription if the prescriber tells them by direct communication within "eight-business-hours" after receiving

the complete verification request that the prescription is inaccurate, expired, or otherwise invalid

- alter contact lens prescriptions. If the prescription specifies private label contact lenses, however, sellers may substitute "identical" contact lenses made by the same manufacturer and sold under a different name
- represent that consumers can get contact lenses without a prescription.

What's a business hour?

Prescriptions are verified automatically if the prescriber doesn't respond to the seller's verification request within "eight-business-hours." A business hour is defined as one hour between 9 a.m. and 5 p.m., Monday through Friday, excluding federal holidays, in the prescriber's time zone. If a seller determines that a particular prescriber has regular Saturday business hours, the seller also may count those Saturday hours as business hours under the Rule.

How is the "eight-business-hour" verification period calculated?

When calculating "eight-business-hours," begin the verification period the first business hour after the prescriber receives a complete verification request and end it eight-business-hours later. For example, if the prescriber receives a request at 10 a.m. Monday, the prescriber must respond by 10 a.m. Tuesday. If there's no response, the seller can provide the contact lenses at 10:01 a.m. Tuesday. If the verification request is received at 10 p.m. Monday, the response would be due by 5 p.m. Tuesday. If there's no response, the seller can provide the lenses at 5:01 p.m. Tuesday.

What is direct communication?

"Direct communication" is a completed communication by telephone, facsimile or electronic mail.

Direct communication by telephone requires reaching and speaking to the intended

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recipient, or leaving a voice message on the telephone answering machine of the intended recipient.

Direct communication by facsimile or electronic mail requires that the intended recipient actually receive the facsimile or electronic mail message.

For more details about compliance, see “Q&A: The Contact Lens Rule and the Eyeglass Rule” at www.ftc.gov.

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357);

TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

Federal Trade Commission	For The Consumer
1-877-FTC-HELP	www.ftc.gov

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Bureau of Consumer Protection
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