

a police report.<sup>7</sup> Thus, staff estimates that the Rule will enable those victims who previously were unable to file reports with local law enforcement to now file reports with a state or federal law enforcement agency. Second, 4.261 million victims annually contact an information furnisher.<sup>8</sup> Staff estimates, based on its knowledge of identity theft trends, that the Rule will result in an increase of 10%, or 426,000, of these victims obtaining an identity theft report. Third, 646,000 victims do not take any action even though their information was used to open new accounts or to commit other frauds.<sup>9</sup> Staff estimates, based on its knowledge of identity theft trends, that the Rule will likely result in 75%, or 485,000, of these victims obtaining identity theft reports. In sum, staff estimates that the Rule will increase by 1.529 million the number of individuals obtaining identity theft reports (618,000 + 426,000 + 485,000).

*Estimated total annual hours burden:* 586,000 hours (rounded to the nearest thousand).

In its 2004 notice of proposed rulemaking and corresponding submission to OMB, FTC staff estimated, based on the experience of the Commission's Consumer Response Center, that an individual would spend an average of 5 minutes finding and reviewing filing instructions, 8 minutes filing the law enforcement report with the law enforcement agency, and 5 minutes submitting the law enforcement report and any additional information or documentation to the information furnisher or consumer reporting agency, resulting in an average of 18 minutes for each identity theft report.

Staff now estimates, based on the ongoing experience of the Commission's Consumer Response Center, that an individual will spend 5 minutes finding and reviewing filing instructions, 13 minutes filing the law enforcement report with the law enforcement agency (due to added entry fields), and 5 minutes submitting the law enforcement report and any additional information or documentation to the information furnisher or consumer reporting agency, resulting in an average of 23 minutes for each identity theft report. Thus, the annual information collection burden

for the estimated 1.529 million new identity theft reports due to the Rule will be 586,000 hours. [(1.529 million × 23 minutes)/60 minutes]

*Estimated labor costs:* \$10,911,000 (rounded to the nearest thousand).

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. According to the Bureau of Labor Statistics survey from June 2005, the average national wage for individuals was \$18.62.<sup>10</sup> Applying this average national wage to the 586,000 burden hours results in an estimated \$10.911 million labor cost burden on individuals who obtain identity theft reports (\$18.62 × 586,000 hours).

*Estimated annual non-labor cost burden:* \$0 or minimal.

Staff believes that the Rule's paperwork burden imposes negligible capital or other non-labor costs, as an identity theft victim is likely to have the necessary supplies and/or equipment already (telephone, computer, paper, envelopes) for purposes of obtaining the identity theft report and submitting it to information furnishers or consumer reporting agencies.

**William Blumenthal,**

*General Counsel.*

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**BILLING CODE 6750-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") is seeking public comments on its proposal to extend the current Office of Management and Budget ("OMB") clearance for information collection requirements contained in its Contact Lens Rule ("Rule") from April 30, 2007 through April 30, 2010. The information collection requirements described below will be submitted to OMB for review as required by the Paperwork Reduction Act ("PRA").

**DATES:** Comments must be received on or before April 30, 2007.

**ADDRESSES:** Interested parties are invited to submit written comments.

Comments should refer to "Contact Lens Rule: FTC File No. R411002," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because U.S. Postal Mail in the Washington area and at the Commission is subject to lengthy delays due to heightened security precautions, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup>

Comments filed in electronic form should be submitted by following the instructions on the web-based form at <https://secure.commentworks.com/ContactLensRule/>. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/ContactLensRule/> weblink. If this notice appears at [www.regulations.gov](http://www.regulations.gov), you may also file an electronic comment through that Web site. The Commission will consider all comments that [www.regulations.gov](http://www.regulations.gov) forwards to it.

Comments also should be submitted to: Office of Management and Budget, ATTN: Desk Officer for the Federal Trade Commission. Comments should be submitted by facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available, to the extent practicable, to the public on the FTC Web site at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments

<sup>7</sup> *Id.* (24% of the 2.577 million victims who contacted law enforcement did not obtain a copy of a police report).

<sup>8</sup> *Id.* at 50 (43% of all 9.91 million victims contact an information provider).

<sup>9</sup> Based upon staff's analysis of data collected in the survey, these types of victims constitute 20% of the 3.23 million victims each year whose information is used to open new accounts or commit other frauds.

<sup>10</sup> The hourly rates are based on average annual Bureau of Labor Statistics National Compensation Survey data, June 2005 (with 2005 as the most recent whole year information available, and June the focal median point). <http://www.bls.gov/ncs/ocs/sp/ncbl0832.pdf> (see Table 1.1).

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be addressed to Karen Jagielski, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2509.

**SUPPLEMENTARY INFORMATION:** Under the PRA, 44 U.S.C. 3501-3520, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing the opportunity for public comment while awaiting OMB action on the Commission's request to extend the existing paperwork clearance for the regulations noted herein.

In its first Notice published in the **Federal Register** on December 18, 2006, 71 FR 75754, the FTC sought public comments on its proposal to extend through April 30, 2010 its current OMB clearance for information collection requirements contained in its Rule. The FTC has received no public comments. The FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before April 30, 2007.

The Rule, 16 CFR part 315, was promulgated by the FTC pursuant to the Fairness to Contact Lens Consumers Act ("FCLCA"), Pub. L. 108-164 (December 6, 2003), which was enacted to enable consumers to purchase contact lenses from the seller of their choice. The Rule became effective on August 2, 2004. As mandated by the FCLCA, the Rule requires the release and verification of contact lens prescriptions and contains recordkeeping requirements applying to both prescribers and sellers of contact lenses.

Specifically, the Rule requires that prescribers provide a copy of the prescription to the consumer upon the completion of a contact lens fitting and verify or provide prescriptions to authorized third parties. The Rule also mandates that a contact lens seller may sell contact lenses only in accordance with a prescription that the seller either:

(a) Has received from the patient or prescriber; or (b) has verified through direct communication with the prescriber. In addition, the Rule imposes recordkeeping requirements on contact lens prescribers and sellers. For example, the Rule requires prescribers to document in their patients' records the medical reasons for setting a contact lens prescription expiration date of less than one year. The Rule requires contact lens sellers to maintain records for three years of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, which they receive directly from customers or prescribers.

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

Commission staff estimates the paperwork burden of the FCLCA and Rule based on its knowledge of the eye care industry. Staff believes there will be some burden on individual prescribers to provide contact lens prescriptions, although it involves merely writing a few items of information onto a slip of paper and handing it to the patient, or perhaps mailing or faxing it to a third party. In addition, there will be some recordkeeping burden on contact lens sellers—including retaining prescriptions or records of "direct communications"—pertaining to each sale of contact lenses to consumers who received their original prescription from a third party prescriber.

**Burden Statement**

Estimated total annual hours burden: 950,000 hours (rounded to the nearest thousand).

In its 2003 PRA-related **Federal Register** Notice and corresponding submission to OMB, FTC staff estimated that the annual paperwork burden for the various disclosure and recordkeeping requirements under the FCLCA and then-proposed Rule would be approximately 600,000 disclosure hours for contact lens prescribers and approximately 300,000 recordkeeping hours for contact lens sellers, a combined industry total of 900,000 hours.

No provisions in the Rule have been amended since staff's prior submission to OMB. The Rules disclosure and

recordkeeping requirements, therefore, remain the same. However, the number of contact lens wearers in the United States has increased to approximately 38 million.<sup>2</sup> Therefore, assuming an annual contact lens exam for each contact lens wearer, 38 million people would receive a copy of their prescription each year under the Rule. At an estimated one minute per prescription, the annual time spent by prescribers complying with the disclosure requirement would be a maximum of 633,333 hours. [(38 million × 1 minute)/60 minutes = 633,333 hours]

As required by the FCLCA, the Rule also imposes two recordkeeping requirements. First, prescribers must document the specific medical reasons for setting a contact lens prescription expiration date shorter than the one-year minimum established by the FCLCA. This burden is likely to be nil because the requirement applies only in cases when the prescriber invokes the medical judgment exception, which is expected to occur infrequently, and prescribers are likely to record this information in the ordinary course of business as part of their patients' medical records. The OMB regulation that implements the PRA defines "burden" to exclude any effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(B)(3)(2).

Second, the Rule requires contact lens sellers to maintain certain documents relating to contact lens sales. As noted above, a seller may sell contact lenses only in accordance with a prescription that the seller either (a) has received from the patient or prescriber, or (b) has verified through direct communication with the prescriber. The FCLCA requires sellers to retain prescriptions and records of communications with prescribers relating to prescription verification for three years.

Staff believes that the burden of complying with this requirement is low. Sellers who seek verification of contact lens prescriptions must retain one or two records for each contact lens sale: Either the relevant prescription itself, or the verification request and any response from the prescriber. Staff estimates that such recordkeeping will entail a maximum of five minutes per sale, including time spent preparing a file and actually filing the record(s).

<sup>2</sup> See Statistics on Eyeglasses and Contact Lenses, All About Vision, August, 2006, available at <http://www.allaboutvision.com/resources/statistics-eyewear.htm>. See also Barr, J. "2004 Annual Report," Contact Lens Spectrum, Jan. 2005, available at <http://www.clspectrum.com/article.aspx?article=12733>.

Staff also believes that, based on its knowledge of the industry, this burden will fall primarily on mail order and Internet-based sellers of contact lenses, as they are the entities in the industry most reliant on obtaining or verifying contact lens prescriptions. Based on conversations with the industry, staff estimates that these entities currently account for approximately 10% of sales in the contact lens market<sup>3</sup> and, by extension, that approximately 3.8 million consumers—10% of the 38 million contact lens wearers in the United States—purchase their lenses from them.

At an estimated five minutes per sale to each of 3.8 million consumers, contact lens sellers will spend a total of 316,667 burden hours complying with the recordkeeping requirement. [(3.8 million × 5 minutes)/60 minutes = 316,667 hours] This estimate likely overstates the actual burden, however, because it includes the time spent by sellers who already keep records pertaining to contact lens sales in the ordinary course of business. In addition, the estimate may overstate the time spent by sellers to the extent that records (e.g., verification requests) are generated and stored automatically and electronically, which staff understands is the case for some larger online sellers.

*Estimated labor costs:* \$32,819,000 (rounded to the nearest thousand).

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. Staff estimates, based on its knowledge of the industry, that optometrists account for approximately 75% of prescribers. Consequently, for simplicity, staff will focus on their average hourly wage in estimating prescribers' labor cost burden.

According to Bureau of Labor Statistics from May 2005, salaried optometrists earn an average wage of \$45.91 per hour and clerical personnel earn an average of \$11.82 per hour.<sup>4</sup> With these categories of personnel,

<sup>3</sup> The FTC's February 2005 study, "The Strength of Competition in the Rx Sale of Contact Lenses: An FTC Study," cites various data that, averaged together, suggests that approximately 10% of contact lens sales are by online and mail-order sellers. The report is available online at <http://www.ftc.gov/reports/contactlens/050214contactlensrpt.pdf>.

<sup>4</sup> Optometrist hourly wages are drawn from the Bureau of Labor Statistics (BLS) Occupational Employment and Statistics Survey, May 2005, based on BLS-sampled data it collected over a 3-year period. See <http://www.bls.gov/news.release/pdf/ocwage.pdf> (Table 1). Relevant clerical hourly rates are unavailable from that survey, however, and are drawn instead from the BLS National Compensation Survey, June 2005 (with 2005 as the most recent whole year information available, and June the focal median point). See <http://www.bls.gov/ncs/ocs/sp/ncbl0832.pdf> (Table 1.1).

respectively, likely to perform the brunt of the disclosure and recordkeeping aspects of the Rule, estimated total labor cost attributable to the Rule would be approximately \$32.8 million. [(\$45.91 × 633,333 hours) + (\$11.82 × 316,667 hours) = \$32,819,322]

The contact lens market is a multi-billion dollar market; one recent survey estimates that contact lens sales totaled \$2.37 billion from Jan 1, 2006 to Dec 31, 2006.<sup>5</sup> Thus, the total labor cost burden estimate of \$32.8 million represents approximately 1% of the overall market.

*Estimated annual non-labor cost burden:* \$0 or minimal.

Staff believes that the Rule's disclosure and recordkeeping requirements impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., prescription pads, patients' medical charts, facsimile machines and paper, telephones, and recordkeeping facilities such as filing cabinets or other storage).

**William Blumenthal,**  
General Counsel.

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**BILLING CODE 6750-01-P**

## FEDERAL TRADE COMMISSION

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Proposed routine use; request for public comment.

**SUMMARY:** The FTC proposes to adopt a new routine use that would permit disclosure of FTC records governed by the Privacy Act when reasonably necessary to respond and prevent, minimize, or remedy harm that may result from an agency data breach or compromise.

**DATES:** The deadline for public comments is April 30, 2007. Comments received after that date will be considered at the FTC's discretion.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Privacy Act of 1974; System of Records; FTC File No. P072104" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the

<sup>5</sup> The Vision Council of America and Jobson Optical Research have conducted large scale continuous consumer research under the name VisionWatch, which reports on the vision care industry. The basis for this statistic is on file with the Federal Trade Commission.

envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H-135 (Annex H), 600 Pennsylvania Ave., NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup>

Comments filed in electronic form should be submitted by following the instructions on the web-based form at <https://secure.commentworks.com/PrivacyAct1974>. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/PrivacyAct1974> weblink. If this notice appears at [www.regulations.gov](http://www.regulations.gov), you may also file an electronic comment through that Web site. The Commission will consider all comments that [www.regulations.gov](http://www.regulations.gov) forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this matter as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Alex Tang, Attorney, FTC, Office of General

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).