

Before the FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

In the Matter of:

Eyeglass Rule, 16 CFR part 456, Project No. R511996 and  
Contact Lens Rule, 16 CFR part 315, Project No. R511995

COMMENTS OF  
THE NATIONAL ASSOCIATION OF OPTOMETRISTS AND OPTICIANS (NAOO)  
CONCERNING THE OPHTHALMIC PRACTICE RULES

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The FTC should maintain both the Eyeglasses Rule and the Contact Lens Rule. The Eyeglasses Rule should be modified to ensure consistency with access to medical records established by HIPAA, by clarifying that prescribers, upon patient request or the request of an authorized third party, such as an optical dispenser, are required to provide (at n charge) duplicate copies of valid eyeglass prescriptions and to verify eyeglass prescriptions promptly.

## I. INTRODUCTION

The National Association of Optometrist and Opticians ("NAOO") respectfully submits these Comments in response to the Federal Trade Commission's ("FTC's") Request for Comments concerning the Ophthalmic Practice Rules.<sup>1</sup>

NAOO is a national organization representing the retail optical industry and eye care providers. Our members offer consumers the convenience of optical dispensaries (staffed with opticians) that are co-located with eye care services from eye care providers (typically optometrists) who prescribe corrective eyewear and perform eye health examinations. Most NAOO members also offer e-commerce optical retailing to customers.

NAOO members collectively represent nearly 9000 co-located eye care offices and optical dispensaries serving millions of patients and eyewear customers each year. NAOO members are dedicated to the principle that consumers are best served when optometrists and opticians are able to be co-located and serve consumers jointly. The form of business models used by NAOO members to affiliate with optometrists may include:

- Subleases or licensed departments to independent contractor optometrists by the optical dispenser,
- Franchising to optometrists and opticians who offer co-located eye care and eyewear sales,
- Operation of a vision care service plan, and
- Employment of the optometrist by the optical dispenser in the states where corporate practice of optometry regulations permit such a model.

These forms of practice offer an alternative to the traditional practice modalities where either there is no on-site eye care available to an optician' customers, or where the eye care patient is tied or at least strongly induced through a variety of practices to become a customer of the dispensary owned and operated by an optometrist who is also the prescriber.<sup>2</sup> NAOO is consumer oriented, and dedicated to the proposition that the free market, in the tradition of the American business system, best meets the consumer's vision care needs.<sup>3</sup>

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<sup>1</sup> 80 Fed. Reg. 53,274 (Sept. 3, 2015.)

<sup>2</sup> Private dispensing optometrists today still make the majority of their revenue from selling the eyewear that they prescribe. These optometrists have a strong incentive to improve the "capture rate" of in-office eyewear sales to their patients. See, e.g., "Equip Your Optical Manager to Take Sales to the Next Level", Beverly Jue-Smith, OD, MBS. Review of Optometric Business, October 14, 2015. <http://www.reviewob.com/equip-your-optical-manager-to-take-sales-to-next-level.aspx>

<sup>3</sup> The FTC is well aware of the negative impact on consumers of restraints on competition in the market for ophthalmic goods. In a 1989 rulemaking proceeding, the FTC concluded that anticompetitive, unfair laws "insulate local optometrists from competition from large, price-competitive chain firms, most of which operate interstate" and thus "deny interstate ophthalmic providers access to local markets when the evidence demonstrates that the States' asserted basis for such actions - to protect citizens from poor-quality ophthalmic care - has no substantial basis in fact." 54 Fed. Reg. 10285, 10298. The FTC observed that a "substantial body of evidence demonstrates that these restrictions raise prices [for] consumers and, by reducing the frequency with which consumers obtain vision care, decrease the overall quality of care provided in the market" without providing "any offsetting benefits" to consumers." 54 Fed. Reg. 10286.

## II. SUMMARY

### The Eyeglass Rule

As the NAOO stated in its 1997 Comment to the FTC,<sup>4</sup> “The FTC's Eyeglass Rule is a triumph of narrowly tailored government action that directly addresses specific consumer problem with minimal cost and remarkable benefits.”

Since 1997, the growth of the US population has led to the benefits of the Eyeglass and Contact Lens Rules now reaching up to 26 million<sup>5</sup> Americans. In 1975, the market for prescription eyeglasses and contact lenses was \$4.1 billion. In 1997, when the NAOO last commented on the Rule, the market had grown to \$15.4 billion. Today, the Vision Council reports that prescription eyewear sales are \$26.3 billion in the 12 months ending June 2015. An additional \$4.9 billion is spent annually on non-prescription sunglasses and reading glasses.<sup>6</sup>

Today's ophthalmic goods consumer is also benefitted by thousands of access points for eyewear at an incredible range of price, selection, fashion and functionality. As a result of the increase in competition in eyewear sales, new technology has continued to develop, with a remarkable range of new lens materials, lens designs, lens coatings and product combinations. Similarly, many consumers value the aesthetic elements of their eyewear purchase as well as the function, often leading to a wardrobe of multiple pairs of eyeglasses combined with contact lenses for different looks and uses.

This remarkable growth would not have happened without the Eyeglass Rule. Consumer access to eyeglass prescriptions, plus the growth of advertising about eyewear and eye care following the Supreme Court's clarification of First Amendment protections for truthful commercial speech, enables consumers to shop for eyeglasses armed with information and “permission to shop around.” Consumers could not do so without access to their prescriptions, because state law establishes that optical dispensers may not legally sell ophthalmic goods for vision correction without a valid prescription.

Given the very strong incentives of prescribers who also sell the products that they prescribe to use multiple tactics to keep their patients as customers, it is critical that the prescribers continue to be required to deliver the prescription to the patient immediately after completion of and payment for the eye exam, without being requested to do so.<sup>7</sup> There

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<sup>4</sup> Comments of the NAOO Concerning Ophthalmic Practice Rules, September 2, 1997.

<sup>5</sup> Sources estimate that 25 % of children and 65-75% of adults could benefit from correction of refractive error. With a current US population approaching 322 million, 23% of whom are under 18, over 18 million children and up to 241 million adults could benefit from vision correction. See Vision Impact Institute, <https://visionimpactinstitute.org>, US Census, <http://quickfacts.census.gov/qfd/states/00000.html>

<sup>6</sup> The Vision Council represents the manufacturers and suppliers of the optical industry. One of the services it provides is optical market research and data. See Vision Care Market Quarterly Overview – June 2015. <https://www.thevisioncouncil.org/member-resources>

<sup>7</sup> Optometry is unique among the health care professions in its “goods and services” financial model, where the optometrist profits significantly from the products he or she may prescribe, and where the majority of the traditional dispensing optometrist's income typically comes from the sale of

is no reason to believe and no evidence to support a conclusion that the automatic release provision is no longer needed; to the contrary, the substantial expansion of consumer choice in recent years is strong evidence that this requirement has helped consumers and that it is more necessary than ever.

The benefits of continuing automatic release are significantly greater than the trivial cost of the requirement.<sup>8</sup> Additionally, a Rule that makes sure patients get their eyewear prescription is consistent with the broader trend of patient access to health and medical records embodied in the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II).

In summary:

- The Eyeglass Rule benefits consumers significantly, by allowing them to comparison shop for eyeglasses and then being able to complete the purchase by presenting the prescription to an optical dispenser of their choice.
- There is a continued need for the Eyeglass Rule overall, particularly the automatic release provisions, because of the financial incentives for the majority of prescribers (dispensing optometrists) to withhold or limit access to prescriptions to keep the sale of eyewear in the prescriber's office, and because of the imbalance of power between patient and prescriber that makes it hard for a patient to request a prescription when the prescriber is doing everything possible to make the eyewear sale to the patient.
- The Eyeglass Rule has not imposed any costs on consumers, and any costs to prescribers related to compliance with the Rule are trivial.
- The Eyeglass Rule should require prescribers to respond to a valid request to verify a prescription within a reasonable time of that request (certainly less than the 30 days required by HIPAA) so that the patient may purchase eyeglasses from an optical dispenser of the patient's choosing, including online optical dispensers.

### The Contact Lens Rule

The Contact Lens Rule went into effect in August 2004 following the enactment by Congress of the Fairness to Contact Lens Consumer Act (the FCLCA) in 2003. In our 1999 Comment to the FTC, we encouraged the Commission to extend prescription release to contact lens wearers and, in the alternative, we encouraged the Commission to take at least a partial step by requiring prescribers to release prescriptions for disposable daily wear contact lenses.

The Commission, following Congressional direction in the FCLFA, went further and applied the same prescription release requirements to all contact lenses. The impact has been positive; none of the putative health problems related to contact lens wear raised by

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eyeglasses and contact lenses prescribed by the OD.

<sup>8</sup> Based on NAOO member experience and observation, thousands of optometrists affiliated in co-location with NAOO member companies regularly comply with the Eyeglass Rule and the Contact Lens Rule with little or no added cost or other burden on the eye care practice.

opponents to prescription release have arisen as a result of including all forms of contact lenses under the Rule.

Our responses to the Commission's questions about the impact of the Contact Lens Rule are similar to our comments related to the Eyeglass Rule. The benefits are significant, the costs are trivial and ending or reducing the prescription release and verification requirements would injure consumers and competition. The changes we call for with respect to the Eyeglass Rule are not needed with the Contact Lens Rule. The Contact Lens Rule already requires prescribers to verify contact lens prescriptions upon request of the patient or the patient's authorized representative, and allows sellers to view a non-response as an affirmation that the prescription is verified. As a result, the NAOO believes there is no basis for the FTC to revise the Contact Lens Rule.

### III. THE U.S. EYEWEAR SECTOR

#### A. Overview

In June 2015, the Vision Council reported that the total Vision Care Market in the US had reached annual sales of \$38.9 billion.<sup>9</sup> Nearly 113 million adult consumers had a comprehensive eye exam with refraction in the prior 12 months.<sup>10</sup> About 158 million adults currently wear eyeglasses. About 25% of those surveyed reported that they were extremely or very likely to buy eyeglasses within 6 months. Clearly, the US market for ophthalmic goods and services is substantial.

#### B. Eyeglasses

In the 12 months ending at the end of June 2015, US frame sales were \$9.45 billion. Sales of ophthalmic lenses in the same period were \$12.3 billion. Almost half of these sales were at optical chains, mass merchants, wholesale clubs and department stores. The average price of the 73.3 million frames sold was \$128.94. The average price of a pair of lenses was \$149.75 (blending all types of lenses sold.)

There were 82.1 million pairs of lenses sold (some consumers purchase lenses only and use an existing frame, so the number of lenses sold is greater than the number of new frames.) Of these lens pairs, 52% were single vision lenses; the remaining 48% were either multi-focal (roughly 18% of the total) or progressive lenses (about 30% of the total.) Lens treatments have become a significant part of the market; 15.8% of the lenses sold were photochromic and 30% had anti-reflective properties.

#### C. Contact Lenses

Contact lens sales were \$4.51 billion in the 12 months ending June 2015. At the end of 2014, the Vision Council's VisionWatch report estimated that there were 39.2 million contact lens wearers in the United States. Of these, 34.3% are

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<sup>9</sup> Vision Care Market Quarterly Overview, June 2015, published by The Vision Council Research Group.

<sup>10</sup> There is a paucity of data regarding how many children have eye exams each year. Most surveys have not attempted to address how to manage parental permission to collect data.

male, and 65.7% are female; the age-based distribution is as follows: 48.0% are 18 to 34 years old, 22.5% are 35 to 44 years old, 16.3% are 45 to 54 years old, and 13.2% are 55 years old.<sup>11</sup>

Lens designs now include toric (for astigmatic patients) and multifocal (for presbyopic patients). Materials have shifted with the majority of patients now wearing silicon hydrogel lenses.<sup>12</sup>

An industry report states that the sale of contact lenses through the internet is almost 18% of the market, while internet sale of prescription eyeglasses is just over 4%.<sup>13</sup>

#### IV. THE EYEGLASSES RULE IS A GREAT SUCCESS: HOWEVER, IT CAN BE IMPROVED.

##### A. Benefits, and Continuing Need for the Eyeglasses Rule

1. The costs to prescribers of eyeglass prescription release are trivial, both initially and for duplicate copies.

Based on NAOO member experience and observation, the thousands of optometrists affiliated in co-location with NAOO member companies regularly comply with the Eyeglasses Rule and the Contact Lens Rule with little or no added cost or other burden on the eye care practice. Most already provide duplicate copies of prescriptions to patients upon request at no charge. Most will also honor patient requests to verify eyeglass prescriptions to optical dispensers, and do not charge for this service either.<sup>14</sup>

2. The benefits to patients of easy access to the eyeglass prescription are significant.

Patients who have their eyeglass prescription are able to comparison shop for eyeglasses and then able to complete the purchase easily by presenting the prescription. Consumers use their expanded access to information from advertising about the price and availability of eyeglasses and contact lenses to shop in thousands of convenient locations other than optometric or medical offices. This includes retail settings such as malls, strip centers, department stores, mass merchants and clubs.

Additionally, more consumers are using the internet to browse vendors, look for specific products and to research functionality and price.<sup>15</sup> Armed with more information, and with

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<sup>11</sup> Contact Lens Spectrum, January 2015.

<http://www.clspectrum.com/articleviewer.aspx?articleID=112115>

<sup>12</sup> Ibid.

<sup>13</sup> Vision Watch Internet Influence Report

<https://www.thevisioncouncil.org/sites/default/files/research/2014InternetInfluenceReportFINAL.pdf>

<sup>14</sup> Note that while the cost to provide duplicate prescriptions and to verify prescriptions by direct communication is low for all prescribers, the incentive to not give the information is significantly higher for the prescribers who dispense eyewear. Most optometrists affiliated with NAOO members do not dispense eyeglasses.

<sup>15</sup> 2014 Vision Council Internet Influence Report

the prescription, consumers can buy eyeglasses at a time and place (including on-line) that is convenient, at an attractive price.

3. There are no material conflicts with any state or other laws; the Eyeglasses Rule would be improved by clarifying how it interacts with HIPAA & other laws relating to patient access to medical records.

The Eyeglasses Rule should clarify that consumers always have a right to access his or her eyeglass prescription, which is part of the patient's medical records. The patient already has the right under HIPAA to access his or her medical records upon request to the individual or entity that owns or maintains such records.

The FTC should require prescribers to promptly provide a duplicate copy of the eyeglasses prescription to the patient, or verify the prescription or provide a copy to any authorized third party that is involved in the patient's treatment, including an optical dispenser. This will allow consumers to have prescriptions filled by the optical dispenser of choice at any time prior to the prescription's expiration date and allow patients to choose optical dispensers that meet the patients' needs and preferences, including online optical dispensers.<sup>16</sup> While HIPAA establishes the consumer's right to the data, the 30-day time frame for a response by the health care practitioner to a request for records in the Privacy Rule does not provide eyeglasses consumers access in a time frame consistent with how the retail and online markets work.

4. The Eyeglasses Rule has enhanced the flow of truthful information.

The Eyeglasses Rule has facilitated the ability of market participants to inform consumers how to get their prescription. Some optical dispensers and other interested parties have published information that consumers are entitled to their eyeglass prescription.<sup>17</sup> Some states go beyond the FTC Rule requirements and require prescribers to post signage about the availability of eyeglass prescriptions.<sup>18</sup>

However, anecdotal evidence indicates that some consumers still don't understand whether they are entitled to get their prescription and other medical records, and when. Some

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<sup>16</sup> The Commission should require prescribers to provide the duplicate prescription or verification without charge, given that the costs of providing a duplicate prescription or verifying an existing prescription by telephone or electronically is trivial. Prescribers are not permitted to charge to verify a contact lens prescription under the Contact Lens Rule, and this has not created a significant burden on prescribers. Although the Privacy Rule permits the covered entity to impose reasonable, cost-based fees (see [45 CFR 164.524](#)), the cost to the prescriber of duplication or verification is so low that any fee would be unreasonable.

<sup>17</sup> A Google Search on October 14, 2015 of "How do I get my Eyeglass Prescription" yielded over 15 million results. Many of the results are from optical dispensers – see e.g., ACLens - <http://www.aclens.com/How-to-Read-Your-Eyeglass-Prescription-c172.html>

<sup>18</sup> See Section 1566, California Code of Regulations, which requires eye doctors to "post in a conspicuous place [in each office] a notice which shall clearly state the legal requirements regarding the release of all corrective lens prescriptions..." Oddly, California recently adopted a law that requires optical dispensers also to post signage that "Eye doctors are required to provide patients with a copy of their ophthalmic lens prescriptions ...". See Section 6 of AB 684 in the 2015 session, amending Section 2554 of the Business and Professions Code.

evidence suggests that at least some prescribers mislead patients about what they are entitled to receive.<sup>19</sup>

Because the benefits of the Eyeglasses Rule are so great and the costs related to the Eyeglasses Rule on prescribers, dispensers and consumers are trivial, the requirement for mandatory (or automatic) prescription release should not be changed.

5. The Eyeglasses Rule should clarify that current law requires prescribers to provide duplicate copies of eyeglass prescriptions to patients upon request and to verify eyeglass prescriptions to qualified third parties upon request of the patient.

Businesses have benefitted by increased access to the market for prescription eyewear. Businesses of all sizes have been positively impacted, from the single location optician without a prescriber co-located at the dispensary, to multi-unit retail chains that sell eyewear to all consumers, including those who got an eye exam at another location, and to e-commerce optical dispensers (there has been a meaningful increase in the number of internet sellers of eyeglasses since 2004.)<sup>20</sup>

The NAOO supports modifying the Eyeglasses Rule to harmonize it with the Contact Lens Rule and HIPAA to clarify that patients have the right to a copy of their prescription as long as it has not expired, and to have a prescriber promptly verify prescription to third-party optical dispenser upon request. Both should be at no charge.

6. What evidence is available concerning the degree of industry compliance with the Eyeglasses Rule?

NAOO is not aware of any statistical or empirical evidence relating to compliance; however, experiential and anecdotal evidence and observation of industry leaders indicates that while many consumers are getting a copy of their eyeglass prescription upon completion of the eye exam, some are not, and some are faced with resistance when they attempt to obtain their prescriptions.

This anecdotal evidence that individual practitioners may sometimes fail or even refuse to provide eyeglass prescriptions supports the idea that maintaining the automatic release requirement is appropriate and necessary to make sure that consumers are getting their eyeglass prescriptions after an eye exam.

- D. The Eyeglasses Rule should be aligned with the Contact Lens Rule to allow eyeglass dispensers to treat a prescription as verified when a prescriber does not respond to a request for verification in a reasonable time.

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<sup>19</sup> “We’ve heard of docs trying to prevent customers from taking their prescription and running to the nearest computer or mobile device by instituting policies such as a charge to release a PD or contact lens prescription.” *How Optometrists Can Win the Battle vs. Online Eyewear Retailers*. <http://www.eyecarepro.net/blog/how-optometrists-can-win-battle-vs-online-eyewear-retailers> (last accessed September 24, 2015).

<sup>20</sup> The Vision Council estimates that almost 4% of eyeglass sales last year were made via e-commerce through the Internet. 2014 Vision Council Internet Influence Report.

Section 315.5 (c) of the Contact Lens Rule defines verification as follows:

*Verification events. A prescription is verified under paragraph (a)(2) of this section only if one of the following occurs:*

*(1) The prescriber confirms the prescription is accurate by direct communication with the seller;*

*(2) The prescriber informs the seller through direct communication that the prescription is inaccurate and provides the accurate prescription; or*

*(3) The prescriber fails to communicate with the seller within eight (8) business hours after receiving from the seller the information described in paragraph (b) of this section. During these eight (8) business hours, the seller shall provide a reasonable opportunity for the prescriber to communicate with the seller concerning the verification request.*

Congress and the Commission recognized that without some mechanism to allow dispensers to proceed to complete a sale after a reasonable attempt to verify a prescription, prescribers could restrain competition and unfairly deny patients access to their prescription simply by not responding to a valid request for verification.

There is no reason to take a different approach with the Eyeglasses Rule. For decades, health care professionals, the industry and the FTC have recognized that to the extent that there is any health or safety risk in improper fitting or inaccurate prescriptions for corrective eyewear, it is very small and it is substantially less for eyeglasses than for contact lenses. The complete absence of any pattern of consumer health problems following more than ten years of the so-called “passive” verification approach embodied in the Contact Lens Rule demonstrates that the FTC would be justified in addressing prescriber unwillingness to verify eyeglass prescriptions by taking the same approach in the Eyeglass Rule.

If the consumer or the authorized third party asks for verification of an eyeglass prescription that is inaccurate, expired or otherwise invalid, the Eyeglass Rule should take the same approach as the Contact Lens Rule, Section 315.5 (d).

*(d) Invalid prescription. If a prescriber informs a seller before the deadline under paragraph (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified under paragraph (c)(2) of this section.*

Of course, there are also obligations placed on the seller by the Contact Lens Rule that should be extended to eyeglass sellers as part of the harmonization of the two Ophthalmic Practice Rules. First, we recommend that eyeglass sellers must either have a copy of the eyewear prescription or have verified the prescription by direct communication with the prescriber prior to selling eyeglasses. The Eyeglass Rule should also require that the seller not alter the prescription and must keep records of its compliance with the verification process.<sup>21</sup> Eyeglass sellers should also be prohibited from falsely representing “by

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<sup>21</sup> See 16 CFR Section 315.5.

advertisement, sales presentation, or otherwise”, that customized corrective eyeglasses may be obtained without a prescription.<sup>22</sup>

- E. The NAOO does not take a position on whether pupillary distance should be defined by the Eyeglasses Rule to be a required element of eyeglass prescriptions.

The NAOO agrees that patients and eyeglass consumers have the right to a copy of medical records, which will include the pupillary distance *if that measurement has been taken* by either the prescriber or the dispenser. However, we do not have consensus among our members regarding the issue of whether the FTC should change the definition of an eyeglass prescription to require that prescribers measure and include PDs.

Historically, the states have allowed opticians and optical dispensers to measure and fit eyeglasses, and as a result, do not require PDs to be included in the elements of a prescription for eyeglasses.<sup>23</sup> Some prescribers and some opticians will take a pupillary distance separately from an eye exam or an eyewear fitting during an eyewear sale. Some will do this at no charge; others may provide it for a nominal fee.

Optical dispensers (both traditional “brick and mortar” and on-line) who wish to measure PDs for their customers have multiple alternatives to be able to do so. Clearly, there is no problem for a “brick and mortar” eyeglass seller in taking a customer’s PD measurement when the consumer is in the store. However, the absence of a PD with an otherwise complete prescription makes it necessary for on-line sellers to have an alternative way to measure PDs remotely to complete an on-line sale of eyeglasses with accuracy and a high degree of customer satisfaction, or they must estimate pupillary distance, with the resulting risk of lower accuracy and higher remakes.<sup>24</sup> Many online sellers of eyeglasses have developed accurate methods for either measuring PD using photos or videos, or by instructing consumers how to self-measure. Whether or not online sellers are able to measure PD, the fact that many prescriptions do not have PD creates a hurdle for consumers who wish to purchase their glasses on-line.

However, our members are divided on how the FTC should resolve the PD issue. To the extent that individual NAOO members have different positions regarding the definition of a prescription or the inclusion of a PD measurement in the prescription, they will file separate comments describing them. We also encourage the Commission to educate consumers on these various options upon conclusion of this review.

## VI. THE CONTACT LENS RULE IS ALSO A GREAT SUCCESS AND SHOULD NOT BE CHANGED.

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<sup>22</sup> See 16 CFR Section 315.7. The Commission should make clear that it is not prohibiting the truthful advertising of non-prescription reading glasses and similar products.

<sup>23</sup> Note that requiring a PD to be included in a prescription would take the right to measure PDs away from opticians, assuming the Eyeglass Rule also prohibited sellers from altering prescriptions, as does the Contact Lens Rule.

<sup>24</sup> Once a PD measurement has been taken and recorded by a prescriber or seller, consumers have a right to get the measurement as part of the health record. Unlike prescriptions, adult PDs vary little over time.

- A. The health and economic benefits for consumers from the Rule are great.

Clearly, the ability to purchase replacement lenses through the internet has increased competition and benefitted consumers significantly. The expansion of the on-line market for contact lenses to nearly 20% of the total US market for contact lenses could not have happened without the Rule. Price competition is widespread, along with competition on service (such as free delivery and flexible return policies.) The health risks alleged by opponents of the Rule and of the Fairness to Contact Lens Consumer Act have not arisen.

- B. Without the Contact Lens Rule, consumers will face challenges obtaining their prescriptions.

In the absence of the Contact Lens Rule, particularly the ability to presume that a prescription is valid when a prescriber has not responded to a request for verification, consumers would be returned to the world before the FCLCA. Many prescribers would simply not respond to requests for verification of contact lens prescriptions and would impose barriers to patient requests for a copy of their prescription. We are aware of instances where prescribers incorrectly inform patients that HIPAA or other laws require written authorization from the patient or face-to-face requests by the patient to the prescriber. The Rule is needed to make clear to prescribers, sellers and consumers that such acts are unfair and deceptive.

- C. The Contact Lens Rule has been implemented with minimal cost, and continuing it will not burden prescribers, consumers or contact lens sellers or other businesses.

As noted previously, NAOO members work with thousands of prescribers and are themselves contact lens sellers (both in traditional stores and on-line.) Our members deal with millions of consumers every year; we affirm that the cost of complying with the Contact Lens Rule is minimal and not burdensome for either prescriber or seller, and imposes no costs on consumers.

## VII. CONCLUSION

The FTC should maintain both the Eyeglasses Rule and the Contact Lens Rule. The Eyeglasses Rule should be modified to ensure consistency with access to medical records established by HIPAA, by clarifying that prescribers, upon patient request or the request of an authorized third party, such as an optical dispenser, are required to provide (at no charge) duplicate copies of valid eyeglass prescriptions and to verify eyeglass prescriptions promptly.