



January 26, 2017

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room CC-5610 (Annex C)
Washington, DC 20580

RE: Contact Lens Rule, 16 CFR Part 315, Project No. R511995

The [Coalition for Contact Lens Consumer Choice](#) (“the Coalition”) respectfully submits the following comments in response to the Federal Trade Commission’s (FTC) request for comments on its Notice of Proposed Rulemaking on the Contact Lens Rule (16 CFR Part 315, Project No. R511995).

The Coalition serves as a voice for 41 million American contact lens consumers by advocating for continued consumer choice in the contact lens market. The Coalition opposes legislative and regulatory proposals at the federal and state levels that would limit the ability of consumers to purchase contact lenses from the retailer of their choice, whether online, in stores or over the phone.

The Coalition represents retailers, contact lens wearers, consumer groups, good government advocacy organizations, optometrists and other eye care professionals, and members of the public with diverse perspectives. The Coalition’s member organizations currently include: 1-800 Contacts, Americans for Tax Reform, Citizen Outreach, Costco Wholesale, Institute for Liberty, the Latino Coalition, Lens.com, LULAC, the National Taxpayers Union, R Street Institute, and the Taxpayers Protection Alliance.

Although not currently Coalition members, [Consumer Action](#) and the [Progressive Policy Institute](#) are also in full agreement with the sentiments expressed in this comment letter and should be considered as co-signers by the FTC.

Addition of Strong Consumer Rights Provision

The Coalition commends the FTC for proposing to add a strong consumer rights provision to the Contact Lens Rule, the regulatory framework that implements the landmark Fairness to Contact Lens Consumers Act of 2003 (FCLCA), and for rejecting proposals that would weaken consumer protections.

The key change proposed by the FTC – the addition of a requirement for optometrists to obtain a signed acknowledgement after providing a prescription to a consumer, and to keep that acknowledgement on file for three years – would help address the primary deficiency of the current system, that many optometrists routinely fail to automatically provide patients with a copy of their contact lens prescription. This new procedure would give the FTC a means to track those who are failing to follow the prescription release requirement under FCLCA and to take action on behalf of consumers' rights when a case warrants. What the FTC is proposing is a common sense, minimally-burdensome rule change that both optometrists and consumers can and should support.

In its proposed rulemaking, the FTC accurately noted that “compliance with the automatic prescription release provision could be substantially improved” and that its proposed change “is likely to spur more competition and innovation among contact lens sellers and manufacturers.”

Rejection of AOA and Manufacturer Health Claims

The FTC also appropriately rejected the health claims made by the American Optometric Association (AOA), the lobbying group representing optometrists, contact lens manufacturers and their joint advocacy group, the Coalition for Patient Vision Care Safety, noting that these claims were not supported by reliable empirical evidence. Specifically, the FTC found no increased risk from buying contact lenses from alternative retailers, stating “the Commission has not seen reliable empirical evidence to support a finding that such sales are contributing to an increased incidence, or increased risk, of contact lens-related eye problems.” This FTC conclusion is consistent with numerous medical studies that have found no connection between eye health problems and the location where contact lenses are purchased.

For example, in 2016, the American Academy of Optometry (AAO) published a study in the medical journal *Contact Lens & Anterior Eye* titled: “Is Purchasing Lenses from the Prescriber Associated with Better Soft Lens Wearer Habits?”¹ According to the study abstract, the study concludes that “the purchase location of soft contact lens wearers had limited impact on known risk factors for soft contact lens-related complications... Closer access to the eye care provider through in-office soft contact lens purchase did not improve soft contact lens habits or reduce the prevalence of risk behaviors.” This study, which used Centers for Disease Control and Prevention (CDC) data, was conducted by the CLAY Group, an optometric research organization formed by the AAO and the AOA, and funded by a grant from Alcon, a leading contact lens manufacturer. It is therefore clear that the AOA and manufacturers continue to make unsubstantiated health claims that are not backed up by their own research.

Other leading medical research has come to the same conclusion. A CDC report from 2015 included a long list of risk behaviors for contact lens-related eye infections, including overnight wear, but made no mention of where the lenses were purchased.² A study published in 2012 in the medical journal *Eye* found no difference in the incidence of keratitis, a leading indicator of bad eye health, between countries that require a prescription to purchase contact lenses and those that do not.³ And a study published in 2007 in the medical journal *Eye Contact Lens* also found no increase in the incidence of keratitis since the advent of online sales or since the adoption of the passive verification system under the FCLCA.⁴ The study further found no significant difference in the incidence of keratitis from one country to another, regardless of the varying extent of online sales in those countries.

Rejection of AOA and Manufacturer Proposals to Weaken Consumer Protections in FCLCA

The Coalition is also pleased that the FTC rejected a series of proposals made by the AOA, contact lens manufacturers and the Coalition for Patient Vision Care Safety that, if adopted, would gut the consumer protections in the FCLCA, making it much harder for consumers to purchase lenses from alternative retailers. The key rejected proposals include: allowing optometrists to block sales by asking a question during the prescription verification process; allowing optometrists to select the method of communication retailers must use in contacting prescribers; lengthening the eight-business-hour period for prescription

verification; restricting automated verification systems; adding requirements for live agents to take calls from prescribers; and adopting quantity limits on lens orders. In rejecting these proposals, the FTC appropriately emphasized the importance of protecting consumer rights as Congress intended when it passed the FCLCA in 2003. The FTC also accurately noted that the groups making these proposals failed to provide empirical evidence or data to support their claims, and instead provided only hypothetical examples and anecdotal stories.

Clarification That Consumers Are Entitled to Additional Copies of Prescriptions

The Coalition also supports the FTC's move to clarify the Contact Lens Rule to state that consumers are entitled to additional copies of their prescription upon request, and that alternative retailers, when designated, are also entitled to receive copies of the prescription. This clarification is necessary due to the continued failure of many optometrists to provide prescriptions to consumers and alternative retailers acting as the consumers' authorized agents.

Conclusion

The Coalition for Contact Lens Consumer Choice appreciates the opportunity to provide our views on the FTC's proposed changes to the Contact Lens Rule. We believe the FTC has made a balanced and thoughtful proposal that will strengthen consumer rights, competition and market innovation, while still ensuring patient health and safety. We urge the FTC to move forward with adoption of its proposed changes as soon as possible.

Sincerely,

The Coalition for Contact Lens Consumer Choice

¹ [Chalmers, Robin et al., "Is Purchasing Lenses from the Prescriber Associated with Better Habits Among Soft Contact Lens Wearers?" *Contact Lens & Anterior Eye*, August 2016.](#)

² [Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, "Contact Lens Wearer Demographics and Risk Behaviors for Contact Lens-Related Eye Infections," August 21, 2015.](#)

³ [Stapleton, Carnt, "Contact Lens Related Keratitis: How Have Epidemiology and Genetics Helped us With Pathogenesis and Prophylaxis," *Eye*, December 2011.](#)

⁴ [Keay, Stapleton, Schein, "Epidemiology of Contact Lens-Related Inflammation and Microbial Keratitis: a 20-Year Perspective" *Eye Contact Lens*, November 2007.](#)