

- **PROPOSED CHANGE:** The Federal Trade Commission proposes to [amend](#) the Contact Lens Rule to require that prescribers obtain signed acknowledgment from patients after providing a contact-lens prescription, and to keep that acknowledgment for no less than three years.
- **PURPOSE: IMPROVING INDUSTRY COMPLIANCE.** This provision addresses the growing trend of prescribers seeking to thwart online sales by falsely denying prescription requests made by third-party retailers. As such, the provision would be a victory for continued consumer choice in the contact-lens market.
 - The Contact Lens Rule requires prescribers to give consumers a copy of their contact lens prescription at the end of a fitting, even if the consumer does not request it. However, there currently is no way to verify whether prescribers oblige.
 - Consumers either need their prescription on-hand to purchase contact lenses from third-party (often lower-cost) retailers or the third-party retailer must request verification from the consumer’s prescriber, which is a longer and more burdensome procedure. Conversely, consumers can buy lenses from prescribers in-office without needing to provide a copy of their prescription. As such, prescribers may discourage consumers from purchasing lenses from third-party retailers by not providing a prescription unless the consumer explicitly requests it, providing an incomplete prescription or not providing prescriptions at all.
 - There is evidence that prescribers repeatedly fail to give consumers their prescriptions, as the rule requires. Last April, [the FTC issued 55 warning letters](#)—45 to prescribers and 10 to retailers—regarding alleged violations of the Contact Lens Rule’s verification clause.
- **REASON NO. 1 TO ENDORSE THE AMENDMENT: IT EXPANDS CONSUMER CHOICE BY CURBING PROTECTIONISM**
 - Consumers are insufficiently aware of their right to copies of their prescriptions, creating information asymmetries that led to the proposed amendment. As stated by the FTC, the new provision “will help inform patients of their right to their prescriptions, increase the number of patients

who receive their prescriptions and, consequently, increase the number of purchases made with initial presentations of complete and valid prescriptions, thus reducing the number of verifications by third-party sellers.”

- During the comment period of the Contact Lens Rule review, prescribers did not object to consumer reforms directly, but rather made proposals that would have carved loopholes into the passive-verification process. The passive-verification process is a vital protection that allows consumers to purchase from whichever retailer they choose. Gutting it would make it exceedingly difficult to buy from online and third-party retailers. Thus, the FTC rejected these amendments.
 - The FTC rejected a proposal that would have required third-party retailers to confirm a prescription's accuracy in any instance when a prescriber communicates a question or concern. Voicing a question or concern would have become a tool for prescribers to block the passive-verification process.
 - The FTC rejected a proposal that would have lengthened the eight-hour passive-verification period during which a prescriber must respond to a prescription-verification request from a retailer. The FTC stated that, if anything, the eight-hour period, implemented in 2004, could be shortened to keep up with advances in market technologies. Additionally, the FTC reiterated the original purpose of the eight-hour period was to prevent undue delays in getting consumers their lenses, as lengthier delays could prove harmful.
 - The FTC rejected a proposal that would have permitted prescribers to issue a written notification to retailers requesting a particular method of communication for verification requests—such as fax or website form, in addition to telephone and email. Requiring verification from retailers would have provided prescribers a loophole that allowed them to deny or delay a retailer’s request more easily and to halt passive verification. Moreover, the database could have proven an increasingly large paperwork burden, as e-commerce volume continues to grow.

- **REASON NO. 2 TO ENDORSE THE AMENDMENT: IT ENCOURAGES COMPETITION AND VIBRANT ONLINE MARKETS**

- In 2003, a year before finalizing the current Contact Lens Rule, the market share of independent prescribers in the market for contact lenses was [68.6 percent](#). Prescribers were relatively free to restrict competition through the prescription-verification process, which allowed them to [sell contact lenses at higher prices](#). By 2014, 10 years after the Rule was set, independent prescribers' market share fell to 39.9 percent, while the market share of online markets grew from 9.5 percent to 18.6 percent over that same period.
- Encouraging competition brought growth in the contact-lens market. From 2005 to 2015, the U.S. industry's market valuation grew from an estimated \$1.8 billion to \$2.7 billion, and the number of contact-lens wearers over age 18 increased from 36 million to 40.9 million.
- The proposed amendment aims to fully realize the Rule by bringing prescribers into compliance with the automatic release of prescriptions, thereby informing consumers of their purchase options and encouraging consumers' ability to comparison shop. If history is an indicator, a more fully realized Contact Lens Rule will bring greater market competition and industry growth.

- **REASON NO. 3 TO ENDORSE THE AMENDMENT: IT DOES NOT RESULT IN HEALTH RISKS**

- During the comment period of the Contact Lens Rule review, prescribers cited claims that third-party contact-lens retailers pose health concerns for consumers.
- Prescribers seeking stricter oversight of online sales have tended to cite a [survey](#) from the Centers for Disease Control and Prevention, in collaboration with Contact Lens Assessment in Youth, which found virtually all wearers have reported at least once engaging in a poor hygiene risk behavior.
 - However, a [2014 study](#) found that regulations on contact-lens retailers had no significant correlation with health risks.
 - Moreover, the 2015 survey makes no distinction as to whether consumers purchased their lenses from a provider, retail store without an exam or over the internet. [More recent surveys](#) by Contact Lens Assessment in Youth find no significant association between purchasing location and eye-health risks.
- In reviewing the current Rule, the FTC dismissed claims that the Rule inadequately protects consumer eye health – claims that were pressed during

the comment period by prescriber groups like the Contact Lens Association of Ophthalmologists, the American Academy of Optometry and the American Optometric Association. The FTC found the comments rested primarily on hypothetical or anecdotal examples, with no data or empirical evidence that could [“reliably demonstrate that purchasing lenses online is a risk factor, or that online purchasers are at a higher risk of developing microbial keratitis or any other ocular complication.”](#)

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