



July 22, 2020

The Honorable Roger Wicker, Chairman
The Honorable Maria Cantwell, Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Wicker and Ranking Member Cantwell:

Consumer Reports urges you not to include a provision in your Committee's contributions to the new COVID-19 response bill that would further delay the effective date of the FTC's update to its Contact Lens Rule. This will not in any way advance our efforts to deal with the challenges of the coronavirus. It will only prolong a dysfunction in the marketplace that the FTC has identified and worked carefully, over a period of five years, to appropriately address.

Congress directed the FTC to develop the Contact Lens Rule in 2003, to address a fundamental conflict of interest that was denying consumers the choice of where to shop for contact lenses, costing them in their budgets and in their convenience. Eye doctors are unusual in the medical profession, in that they can be retail sellers of the products for which they write prescriptions – the contact lenses. For many, the retail side is a big profit center. So eye doctors have a powerful incentive to direct their patient down the hallway to fill the prescription, rather than giving the patient a copy of the prescription and the freedom to choose where to fill it. Many eye doctors were failing to give patients a copy of the prescription – or even outright refusing. The Contact Lens Rule addressed this conflict of interest by requiring the eye doctor to do so.

Unfortunately, while many eye doctors have complied in good faith with this requirement, the FTC found compelling evidence that many were disregarding it. This led the FTC, as part of updating the Rule, to require eye doctors that also sell contact lenses to document, and keep a record of, the patient's confirmation of receiving the prescription. This enables an eye doctor to easily substantiate compliance, and enables the FTC to focus enforcement where it is warranted.

This update has been under consideration by the FTC for almost five years, beginning with a review publicly noticed in September 2015 and inviting comment.¹ A proposed rule was published in December 2016, inviting comment.² A public workshop was held in March 2018,

¹80 FR 53272 (Sept. 3, 2015).

² 81 FR 88526 (Dec. 7, 2016).

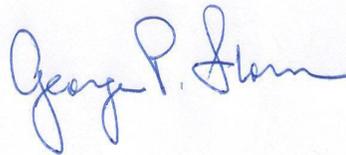
before and after which further comment was invited.³ A revised proposed rule was published in July 2019, with further comment again invited. Throughout that period, eye doctors have had ample opportunity, along with others, to make their views known and have them considered. Consumer Reports provided comments at each stage; and the eye doctors provided extensive comments.

Consumer Reports recommended a number of specific revisions to the Rule to improve its effectiveness and minimize unnecessary burdens for eye doctors, contact lens sellers, and patients.⁴ The updated Rule does not incorporate all of our recommendations. Nonetheless, it makes several important improvements, perhaps chief among them the requirement to document patient confirmation of receiving the prescription.

The COVID pandemic is creating substantial challenges for all of us, in a number of areas. But the requirement to document the patient's confirmation of receiving the prescription is not one of them. The new Final Rule gives eye doctors ample flexibility in how to comply with this new requirement. And the updated rule will not go into effect until 60 days after it is published in the Federal Register. Eye doctors have plenty of time to implement this simple – yet highly useful – requirement without burden or disruption.

This new requirement is a long-awaited linchpin of better ensuring that the Contact Lens Rule effectuates Congress's intent: addressing the eye doctor's conflict of interest, so that consumers who wear contact lenses are able to benefit from the savings and convenience that a competitive marketplace provides.

Sincerely,



George P. Slover
Senior Policy Counsel
Consumer Reports

cc: Members, Senate Committee on Commerce, Science, and Transportation

³ 82 FR 57889 (Dec. 8, 2017).

⁴ E.g., <https://advocacy.consumerreports.org/wp-content/uploads/2019/07/FTC-Contact-Lens-Rule-CR-comment-7-29-19-FINAL.pdf>.