



November 13, 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 the Committee not to approve S. 4613, the so-called Contact Lens Rule Modernization Act. This mis-named and ill-conceived legislation would remove the key compliance mechanism built into the Fairness to Contact Lens Consumers Act when it was enacted on a strong bipartisan basis in 2003 – by a vote of 406-12 in the House, and by unanimous consent in the Senate. And it would fundamentally derail the careful bipartisan process the Federal Trade Commission has undertaken over the past several years to consider updates to the Contact Lens Rule to ensure its effectiveness – a process that culminated in an updated rule just five months ago.

Congress enacted this law, and directed the FTC to develop rules to implement it, 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 were outright refusing. The Contact Lens Rule addressed this conflict of interest by legally requiring the eye doctor to do so.

The 2003 law also responded to the problem that eye doctors were making it difficult for contact lens sellers to verify the prescription to make sure it was correct and current. The law established a reliable process for the seller to verify the prescription, with a back-up “passive verification” in the event the eye doctor did not – or would not – confirm it within a reasonable time.

Unfortunately, while many eye doctors have complied in good faith with the requirement that they automatically provide the prescription, the FTC found compelling evidence that many were disregarding it. This led the FTC, as a centerpiece 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.

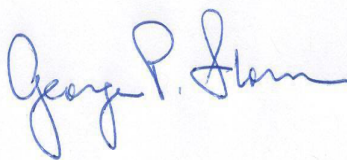
This update has been under consideration by the FTC for almost five years, beginning with a review publicly noticed in September 2015 and inviting comment.¹ A proposed rule was published in December 2016, inviting comment.² A public workshop was held in March 2018, before and after which further comment 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 submitted comments recommending 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 While the updated rule does not incorporate all of our recommendation, it makes several important improvements, perhaps chief among them the requirement to document patient confirmation of receiving the prescription. That requirement will make the rule work more effectively for all concerned. It should not be overturned before it has a chance to take effect.

The argument that this simple requirement will be too burdensome is simply overblown. The eye doctors presented it to the FTC during the prolonged rulemaking process. Their views were carefully considered, and taken into account in the shaping of the final rule.

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. We you not to approve S. 4613.

Sincerely,

A handwritten signature in blue ink that reads "George P. Slover". The signature is fluid and cursive, with the first name "George" being the most prominent.

George P. Slover
Senior Policy Counsel
Consumer Reports

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

¹ 80 FR 53272 (Sept. 3, 2015).

² 81 FR 88526 (Dec. 7, 2016).

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>.