



December 1, 2020

The Honorable Richard Shelby, Chairman
The Honorable Patrick Leahy, Ranking Member
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Leahy:

Consumer Reports urges the Committee not to include any provision in the year-end appropriations resolutions that would delay or undermine the Contact Lens Rule, as updated just five months ago, following a careful bipartisan process the Federal Trade Commission has undertaken over the past several years to consider updates to ensure the rule's effectiveness.

The Contact Lens Rule helps ensure that consumers can choose where to purchase contact lenses, and do not have to purchase them from their eye doctor at prices and terms the eye doctor sets. The rule implements the Fairness to Contact Lens Consumers Act, enacted on a strong bipartisan basis in 2003 – by a vote of 406-12 in the House, and by unanimous consent in the Senate. A similar rule has been in effect for eyeglasses for more than 40 years.

The key to ensuring that consumers have this choice is two-fold. First, the Contact Lens Rule requires the eye doctor to give the patient a copy of the prescription. Second, it requires the eye doctor to give timely confirmation to a lens seller that the prescription is accurate and current.

The rule addresses a conflict of interest for eye doctors, who are unusual in the medical profession in being legally authorized to sell what they prescribe. The sale of contact lenses has been a significant profit center for many eye doctors. Many eye doctors were sending patients down the hall to purchase contact lenses from the doctor, failing to give them a copy of the prescription, or outright refusing – denying patients the choice of where to shop, costing them in their budgets and, for refills, in their convenience.

Unfortunately, while many eye doctors have complied in good faith with the requirement that they provide the prescription, the FTC found compelling evidence that many were disregarding it. This has led the FTC to update the rule, to require eye doctors who 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. And they eye doctors provided extensive comments.

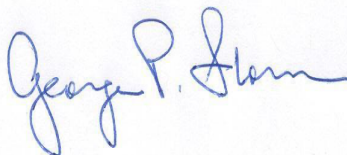
Consumer Reports also submitted comments at several points during this FTC's consideration, to improve the rule's effectiveness and minimize unnecessary burdens for eye doctors, contact lens sellers, and patients.⁴ First and foremost was support for the requirement to document patient confirmation of receiving the prescription, as a practical solution that will make the rule work more effectively and efficiently for all concerned.

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

Likewise, there is no safety issue that eye doctors cannot fully address under the current rule, by working in good faith with sellers to verify the prescription. This issue was also raised in the FTC's proceeding, and carefully considered.

This new requirement is a long-awaited, carefully considered improvement to better ensure 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 conveniently and safely benefit from choice in a competitive marketplace. It should not be delayed, overturned, derailed, or undermined before it has a chance to take effect.

Sincerely,



George P. Slover
Senior Policy Counsel
Consumer Reports

cc: Members, Senate Committee on Appropriations

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>.