

Monday Is the Deadline to Comment on Federal Trade Commission's Eyeglass and Contact Lens Rules

by Staff (/author/staff/)

Friday, October 23, 2015 12:27 AM



WASHINGTON, D.C.—Monday, Oct. 26, 2015, is the deadline for interested parties to comment on the efficiency, costs, benefits and impact of the Federal Trade Commission's Ophthalmic Practice Rule (

https://www.ftc.gov/system/files/documents/federal_register_notices/2015/09/150903eyeglassrulefrn.pdf)
Eyeglass Rule) and Contact Lens Rule

https://www.ftc.gov/system/files/documents/federal_register_notices/2015/09/150903contactlensrulefrn.pdf

part of the FTC's systematic review (<https://www.ftc.gov/enforcement/rules/retrospective-review-ftc-rules-guides>) of all current FTC rules and regulations, the request for comment was announced

<http://www.visionmonday.com/latest-news/article/federal-trade-commission-seeks-comments-about-eyeglass-and-contact-lens-rule-1/>) on Aug. 25, 2015. All comments received are being posted on the FTC's Public Comments page (<https://www.ftc.gov/policy/public-comments>).

The FTC will review comments received and make a recommendation to the Commission regarding whether or not to make any changes to the Rules," a spokesperson for the FTC told *VMail*, adding that there's no deadline" and that the FTC "can't speculate on a time frame."

History suggests that it will take a long time for the Staff to make a recommendation and then another long time for the Commission to decide what to do," a consultant and long-term professional in the optical business told *VMail*, referencing the following facts: Based on the Feb. 4, 2004, FTC notice about its regulatory review of the Ophthalmic Practice Rules (69 Fed. Reg. 5451), the initial request for public comment was published on April 3, 1997. It took the FTC almost seven years to act. Part of the delay was due to the Commission watching the development of the Fairness to Contact Lens Consumers Act (<http://www.gpo.gov/fdsys/pkg/PLAW-108publ164/pdf/PLAW-108publ164.pdf>) (which required ECPs to provide patients' with a copy of their contact lens prescription) and then incorporating the requirements of that Act in its action on contact lenses. The previous review of the Eyeglass Rule began in 1985, and the Commission did not finalize its decision to retain the Rule until 1989.

Soon after the FTC's recent Aug. 25, 2015, request for comments, Senator Charles Schumer (D-NY) held <http://www.visionmonday.com/latest-news/article/senator-schumer-and-aoa-presidentelect-encourage-ftc-to-change-eyeglass-rule-1/> a press conference on Sunday, Sept. 27, 2015, in front of a New York LensCrafters store and released a statement (<http://www.schumer.senate.gov/newsroom/press-releases/-schumer-reveals-avg-price-of-eyeglasses-now-at-more-than-300-and-going-up-consumers-are-deprived-of->

complete-prescription-info-which-would-allow-them-to-shop-around-at-stores-online-for-best-deal-senator-urges-ftc-to-establish-new-rules-that-would-promote-competition--dramatically-lower-eyeglass-prices) calling on the FTC to update regulations on eyeglass prescriptions requiring eyecare providers to give complete eyeglass prescription information to consumers. He cited "sky-high prices" and the need to shop around at stores and online among the reasons for changing the FTC rules to "promote competition and dramatically lower eyeglass prices."

Also appearing at the news conference, American Optometric Association (<http://www.aoa.org/?sso=y>) AOA) president-elect Andrea P. Thau, OD, of New York, asked the Senator to investigate any control over the market that some eyewear companies and some insurance companies that also sell glasses might have. In addition, "The AOA will submit comprehensive formal comments on the rule before the Oct. 26 comment deadline," an AOA spokesperson told *VMail*.

Since the FTC's request for comments, many others, both inside and outside the profession, have commented on the FTC's Public Comments Pages in response, 537 about the Eyeglass Rule and 25 about the Contact Lens Rule, as of press time yesterday.

In the comments (<https://www.ftc.gov/policy/public-comments/initiative-624>) regarding the Eyeglass Rule, consumers complained about the difficulty of obtaining their prescription and/or their PD from their eyecare professionals and the timing when a new prescription is needed. Eyecare professionals' comments attempted to educate readers about the differences between a refraction and a comprehensive examination and they also disputed the need to level the competitive playing field with online retailers.

On Monday, Oct. 26, the AOA weighed in with their comments urging the FTC to take action to ensure the regulations which implement the Fairness to Contact Lens Consumers Act (FCLCA) are fair and effective among patients and their doctors, and retailers.

The AOA long expected this rule review to take place this year, and recently asked AOA members to put forward concerns with the real-world implementation of these rules. Among those concerns included instances of patients harmed, receipt of duplicative or improper prescription verification requests, experiences related to incorrect or unauthorized contact lenses sold, and other irregularities or vulnerabilities that doctors have identified with the system. These member concerns were included in the formal comments submitted to the FTC.

On behalf of patients and based on our mission of caring for America's eye health, the AOA is insisting that basic public health safeguards be made the number one priority as Federal officials review existing regulations and the business practices of unscrupulous Internet sellers," said Steven A. Loomis, OD, president of the American Optometric Association. "Through comments we submitted today and every stage of this process to come, the AOA will be helping to ensure that the Federal Trade Commission, the Food and Drug Administration, the Centers for Disease Control and members of Congress all recognize the urgent need for a crackdown on illegal, improper and deceptive sales tactics taking hold on the Internet and putting eye health at risk."

[Click here \(<http://www.aoa.org/news/advocacy/update-aoa-submits-comments-on-ftc-contact-lens-eyeglasses-rules?sso=y>\)](http://www.aoa.org/news/advocacy/update-aoa-submits-comments-on-ftc-contact-lens-eyeglasses-rules?sso=y) to learn more about the AOA's comments to the FTC.

Here are some representative samples of the many consumer comments:

My prescription rarely changes, and when it does I can usually tell on my own. It's always been frustrating that I have to go back to my doctor to 'update' my prescription every time I want new glasses (like now!). I'm trying to purchase new glasses but am unable to do so with my existing prescription...although I know I can see out of that prescription just fine." –Christine Chang (<https://www.ftc.gov/policy/public-comments/2015/10/08/comment-00401>), Virginia

I recently tried to have my scratched lenses replaced but was refused as I did not have a prescription taken

within the past 12 months. The U.S. National Institutes of Health recommends a vision check for healthy men at least once every three years. If we are being asked to take greater control over our health and health care spending why are we being saddled with restrictions that increase our annual costs yet do not materially improve our health care?" – Kevin Meszaros (<https://www.ftc.gov/policy/public-comments/2015/09/22/comment-00281>), Illinois.

I recently tried to order glasses online and wasn't able to do so without my PD. Unfortunately, my doctor didn't provide that on my original prescription, so I had to take another time-consuming trip to my optometrist before finally obtaining that number. Ultimately, the process took a full week longer than it needed to. It seems strange to me that when I ordered my contacts in the past, all measurements come with my prescription, but not for my eyeglasses." –Raymond Ortegaso (<https://www.ftc.gov/policy/public-comments/2015/09/05/comment-00008>), California.

Here are some comments from eyecare professionals:

The confusion is based on assuming that taking eyeglass measurements is part of the eye exam. It is absolutely not. When you go into an optical shop to see an optometrist, there are two services you may be paying for. One is the eye exam. People wrongfully think it is just testing for eyeglass prescription. It's so much more than that.

It's an examination that can detect over 60 systemic diseases. It is the medical test of your eye health, your physical health, a test for vision correction, then a refraction. You can walk out at that point. You are not handed a copy of the Rx automatically, just like you are not handed copies of medical tests...unless you ask for it. However, the PD is not part of the eye exam or the vision correction Rx. It is part of the services involved in fitting for eyewear. If you choose to buy eyeglasses, then you'll be fitted by an optician, who will take a number of measurements for you, including the PD." –Robert Evangelista (<https://www.ftc.gov/policy/public-comments/2015/10/03/comment-00373>), owner/president, Co/op Optical (<http://www.visionmonday.com/business/dba/article/loyalty-is-twoway-street-for-coop-opticals-owner-wce-llc>), Detroit.

The current spectacle Rx release rule is sufficient as is with the exception of three things: 1) In keeping with the original intent of this rule, a consumer's binocular pupillary distance should be included. This would enable consumers to fulfill their spectacle prescriptions at the supplier or vendor of their choice, including online/internet vendor fulfillment. 2) Lack of compliance with this rule has been flagrant. In my area, it is common for eyecare providers who conduct exams and sell glasses to not be forthcoming with providing the spectacle Rx. In an age of electronic record keeping, it should not be inconvenient nor place undue expense or burden on the prescriber to provide a copy of the spectacle Rx after the exam but before the consumer is led to or enters the optical dispensary.

3) The Federal government should lead the way in mandating that spectacle prescriptions not have expiration dates. Although expiration dates are promoted as an eye health gatekeeping component, mild prescriptions, including those for plano, are rarely issued, and so the use of expiration dates discriminates and restricts the purchase of optical goods by those who have prescribed eye errors, while those who receive a clean bill of health are not restricted in their purchase of optical goods without having to go through a mandatory eye exam. This situation has existed for years and is illogical. –Barry E. Santini (<https://www.ftc.gov/policy/public-comments/2015/09/08/comment-00011>), ABOM, owner, Long Island Opticians, Seaford, N.Y.

This expansion is completely unnecessary to and of no benefit to any sector of the ophthalmic industry, save one—online prescription eyewear businesses. Online eyewear sites are almost always providers of economy eyewear, achieving a market advantage over others by declining to provide necessary key services found only in a physical location staffed by qualified personnel. They leave it to the consumer to seek out those services elsewhere. Their sites erroneously advise that these services should be obtained gratis or de minimis. The skilled professionals in the eyewear industry have historically been quite generous with their knowledge and time, but the nature of the online business model far exceeds the bounds of that

generosity.” –Kenneth Lowe (https://www.ftc.gov/system/files/documents/public_comments/2015/10/003b1-17627.pdf), BA, ABOC, NCLEC, assistant clinical professor, chief of eyewear clinic, school of optometry, University of California, Berkeley.

Prevent Blindness applauds the FTC for maintaining the Ophthalmic Practice Rule (Eyeglass Rule) since its inception in 1978, when it was promulgated based on a finding that many consumers were being deterred from comparison shopping for eyeglasses because eyecare practitioners refused to release prescriptions, even upon a patient's request, or charged an additional fee for release of a prescription. I assert that there is a continuing need for this rule. Further, we believe that the rule should be extended to require that prescribers provide a duplicate copy of a prescription to a patient who does not currently have access to the original. –Hugh R. Parry, president/CEO, [Prevent Blindness](http://www.preventblindness.org/). (<http://www.preventblindness.org/>)

On the far fewer number of [comments \(https://www.ftc.gov/policy/public-comments/initiative-621\)](https://www.ftc.gov/policy/public-comments/initiative-621) submitted about the Contact Lens Rule, while there were no comments from consumers, many optometrists complained that discount contact lens retailers were taking advantage of the system. Here are a couple of representative responses:

Too often in the last decade, the FTC has silently allowed some sellers to repeatedly fill contact lens prescriptions well past the expiration date, in some instances putting the patients' sight in jeopardy. The passive verification method has incentivized contact lens sellers to game the system.” –Tomas Borsky, OD, [Eye to Eye Optometric Practice \(https://www.ftc.gov/policy/public-comments/2015/10/17/comment-00026\)](https://www.ftc.gov/policy/public-comments/2015/10/17/comment-00026), Grass Valley, California.

We often get faxed requests for prescription verification when the office is closed, such as on a Friday night stating that the prescription will be refilled for the patient automatically if we do not reply within 24 hours of receiving the request. This creates a situation wherein we cannot respond in a timely manner if the office is closed for the weekend. The passive request system should be revoked, or revised to at least a three-day time frame, to enable the doctor to respond to e-mails received when the office is closed for normal business hours/days off.” [Suzanne Huang, OD, \(https://www.ftc.gov/policy/public-comments/2015/10/16/comment-10017\)](https://www.ftc.gov/policy/public-comments/2015/10/16/comment-10017) San Francisco, California

Anyone can post additional comments on the [FTC site \(https://www.ftc.gov/policy/public-comments/initiative-624\)](https://www.ftc.gov/policy/public-comments/initiative-624) by Monday, Oct. 26, 2015, and instructions for filing comments appear in the Federal Register Notices linked to above.

© Copyright 2015 Jobson Medical Information LLC. All rights reserved. Reproduction in whole or in part without permission is prohibited.