



Office of Commissioner
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Statement of Commissioner Rebecca Kelly Slaughter

Regarding the Eyeglass Rule
Commission File No. R511996

June 27, 2024

I am tremendously grateful to the FTC’s staff in the Division of Advertising Practices for their diligence in completing the Federal Register document updating the Eyeglass Rule—all in under 18 months from the notice of proposed rulemaking.¹ Staff worked through extensive comments from many sellers, prescribers, consumers, and other interested parties in response to the NPRM; held a workshop featuring three balanced panels on prescription release, the confirmation requirement, and other rule subjects such as digital copies of prescriptions, and assessed additional comments submitted in connection with the workshop; and fashioned a comprehensive notice that ably grapples with the robust record and persuasively explains the rationale for updating the Eyeglass Rule to match the requirement of the Contact Lens Rule, 16 C.F.R. § 315.3(c), that prescribers obtain signed confirmation from patients that they received a copy of their prescription. This small but meaningful update—the product of substantial staff effort—will benefit consumers by helping ensure that prescribers comply with the Rule’s prescription-release requirement.

Eyeglasses, like contact lenses, are the stuff of everyday life and kitchen-table budgeting.² The rulemaking record underscores how important the prescription-release requirement is to budget-conscious consumers, too many of whom have not benefited from it, even though it has been the law since 1978.³ “Being able to have a prescription in your hands as soon as your examination is done would be very beneficial to a lot of people for many reasons,”

¹ It would be unfortunate if this successful and efficient rulemaking added to the myth that section 18 rulemaking takes upward of a decade to complete. Although it is true that this final rule grows out of a routine review of the Eyeglass Rule, which commenced with an advance notice of proposed rulemaking in 2015, *see* 80 Fed. Reg. 53274 (Sept. 3, 2015), the Commission’s notice of proposed rulemaking in January 2023 is a better starting line from which to evaluate the duration. A casual observer could draw an incorrect inference by looking at the date of the ANPR, but the Commission spent the interregnum between it and the NPRM on updating the corollary rule for contact lenses, whose routine review commenced the same day and eventually concluded with a requirement for a signature verification of prescription release. *See* Contact Lens Rule (Request for Comment), 80 Fed. Reg. 53272 (Sept. 3, 2015); Contact Lens Rule (NPRM), 81 Fed. Reg. 88526 (Dec. 7, 2016); Contact Lens Rule (Final Rule), 85 Fed. Reg. 50668 (Aug. 17, 2020). Notably, the Commission can update the Contact Lens Rule under the notice-and-comment procedures of the Administrative Procedure Act, *see* 15 U.S.C. § 7607, whereas the Eyeglass Rule is subject to the additional requirements of section 18 of the FTC Act, 15 U.S.C. § 57a.

² I have long been focused on reducing costs for consumers of contact lenses and eyeglasses and remain interested in how the United States can improve affordability through reforms that are widely embraced in the rest of the world. *See* Concurring Statement of Comm’r Rebecca Kelly Slaughter on Contact Lens Rule (June 23, 2020), https://www.ftc.gov/system/files/documents/public_statements/1577127/r511995_contact_lens_final_rule_-_rks_concurrence.pdf (recommending legislative fixes and other strategies to reduce contact-lens prices).

³ *See* Advertising of Ophthalmic Goods and Services, 43 Fed. Reg. 23992, 24007 (June 2, 1978).

wrote one anonymous consumer, describing an encounter in which a prescriber charging “outrageous” prices made it difficult for the commenter to obtain their prescription.⁴ “It shouldn’t be a hassle for someone to get their prescription, after all it is your prescription, and you shouldn’t have to pay extra for it.”⁵ The updated Rule will help ensure that consumers actually get their prescriptions and can shop around for what works best for them.

I write separately to highlight that this consumer-protection rule, like others, has been and continues to be an important part of our competition mission; it is, in fact, profoundly pro-competitive. In some quarters, rulemaking is synonymous with harming competition, hamstringing businesses, and stifling innovation. To be sure, bad rules can have bad outcomes. But the Eyeglass Rule is a powerful reminder that good consumer protection rules can lay the foundations for a competitively healthy landscape. Without the prescription-release requirement of the original rule, which the FTC promulgated on its own initiative, an entire industry that consumers enjoy today would likely never have emerged. It may be difficult to imagine that, not even fifty years ago, consumers were routinely forced to purchase expensive eyeglasses from their prescribers instead of being able to shop, as we can today, at a multitude of sellers and huge variety of price points.

One of the institutional advantages that we have at the FTC is the ability to view our competition and consumer-protection missions not in isolation but in tandem, and I try always to keep in mind that our work in one sphere can affect the other. With the Eyeglass Rule and other rules,⁶ we have decades of experience in ensuring that our consumer-protection efforts not only support honest businesses but also create new conditions for robust competition. In so many circumstances, clear rules benefit smaller businesses who can neither afford expensive lawyers to parse complex rules nor remain economically viable in the face of unfair or deceptive practices from competitors. As we proceed with new rulemakings, I hope that commenters and petitioners will continue to address the competition effects of proposed rules and alternatives so that the Commission’s rulemaking work will, whenever possible, advance both of our missions. Staff’s terrific work on the Eyeglass Rule is a testament to our ability to do just that.

⁴ Cmt. of Anonymous on Eyeglass Rule NPRM (Apr. 5, 2023), <https://www.regulations.gov/comment/FTC-2023-0001-0030>.

⁵ *Id.* See also Cmt. of Laurel Kilgour on Eyeglass Rule NPRM (June 20, 2023), <https://www.regulations.gov/comment/FTC-2023-0001-0048> (“I don’t want to put undue burdens on small businesses and I don’t have strong opinions about the technicalities of the rule, but this doesn’t seem terribly different than requirements for my doctor or dentist keep my medical records on file for a certain number of years.”); Cmt. of Gina Crete on Eyeglass Rule NPRM (May 16, 2023), <https://www.regulations.gov/comment/FTC-2023-0001-0035> (“Some people have to go to other places to afford eyeglasses. I need the correct lenses and measurements to do my job but have been refused all of the information. That is WRONG on every level. . . . Do something about this please!”).

⁶ The Funeral Rule, 16 C.F.R. pt. 453, is another example of a consumer-protection rule the Commission issued on its own initiative under section 18 that has had profoundly pro-competitive effects since its promulgation in 1984, because it ensures that funeral consumers can purchase only the products and services they need instead of an all-in-one bundle. In particular, because of the Funeral Rule, consumers can purchase more expensive items, such as caskets and urns, directly from third parties, including major online and brick-and-mortar retailers, which facilitates competition among sellers and drives down costs for consumers.