In general, the comments primarily addressed two broad issues: (1) Whether the current Rules, which require the release of eyeglass prescriptions to patients upon completion of an eye examination, should be retained, repealed, or modified; and (2) whether the Rules’ eyeglass prescription release requirement (“eyeglass prescription release rule”) should be extended to require the release of contact lens prescriptions.

With respect to the first issue, the Commission has determined to retain the Rules in their current form. As to the second issue, while the Commission’s regulatory review was pending, Congress enacted and the President signed the Fairness to Contact Lens Consumers Act, which requires that prescribers release contact lens prescriptions to their patients. The FTC is publishing a Notice of Proposed Rulemaking today seeking comment on a proposed rule to implement the Act, including a contact lens prescription release requirement. Accordingly, the Commission concludes that it is not necessary to address during this regulatory review whether to extend the Ophthalmic Practice Rules to mandate that contact lens prescriptions be released.

This document first describes the requirements and the background of the current Ophthalmic Practice Rules. It then summarizes the comments received regarding whether the eyeglass prescription release rule should be retained, eliminated, or changed, and explains the Commission’s determination to retain that rule in its present form. Finally, this document discusses additional issues relating to this regulatory review of the Rules.

II. Description and Background of Ophthalmic Practice Rules

The Ophthalmic Practice Rules require an eye care practitioner (an optometrist or ophthalmologist) to provide a patient, immediately after completion of an eye examination, with a free copy of his or her eyeglass prescription (the “eyeglass prescription release rule”). The Rules also prohibit an eye care practitioner from conditioning the availability of an eye examination on a requirement that the patient agree to purchase ophthalmic goods from the practitioner. The Rules further prohibit an eye care practitioner from making certain disclaimers and waivers of liability.

In promulgating the original Rules in 1978, the Commission found that many consumers were being deterred from comparison shopping for eyeglasses because eye care practitioners refused to release prescriptions, even when requested to do so, or charged an additional fee for the release of a prescription. At that time, prohibitions and restrictions on advertising of ophthalmic goods and services were commonplace. Indeed, eye care practitioner advertising, especially price advertising, was restricted in 49 states, either by governmental or private regulation. Without such advertising, consumers generally knew little about their options in purchasing eye exams and eyeglasses, including that they have the option of purchasing them separately. The Rules therefore include a requirement that eye care practitioners automatically release a copy of the prescription regardless of whether the patient requests it.

The Commission has previously considered modifying the eyeglasses prescription release rule. In 1985, the agency published a notice of proposed rulemaking that invited comments on whether the rule should be modified or repealed. In 1989, the FTC decided to retain the rule, because there was still significant non-compliance with the rule and a continued lack of consumer awareness about their ability to obtain their prescription and purchase eyeglasses separately.

III. Eyeglass Prescription Release Rule

A. Summary of Comments

1. Costs and Benefits of Eyeglass Prescription Release Rule

In connection with the Commission’s review of its Ophthalmic Practices Rules, the April 1997 Federal Register Notice requested comments on whether the eyeglass prescription release rule should be retained, modified, or eliminated. Many commenters support retention of that requirement, including...
consumers money.19 Supporters of retaining the rule also argue that lower prices have resulted in increased accessibility to eyewear.20 Other commenters, including consumers, expressed similar views.21 On the other hand, the American Optometric Association (“AOA”),22 the California Optometric Association (“COA”),23 the Texas Optometry Board,24 and others urge the Commission to rescind the eyeglass prescription release rule. According to these commenters, increased competition and advertising in the eyecare marketplace now enable consumers to shop among a wide variety of eyeglass sellers, and have made consumers aware of the benefit to them of obtaining their eyeglass prescriptions.25 These commenters further contend that giving a prescription to a patient who does not want one imposes unnecessary costs on eye care practitioners, such as preparing unnecessary paperwork and expending their time.26

2. Release Upon Request

The request for public comment also asked whether, if the eyeglass prescription release rule is retained, the Commission should modify the rule to require an eye care practitioner to release a prescription only if the patient requests it, rather than releasing it automatically. Most commenters who support retention of the eyeglass prescription release rule also urge the Commission to retain the requirement that the prescription be released automatically. Commenters, such as OAA and Lens Express, assert that many consumers still are not aware that they can obtain their eyeglass prescription.27 OAA further asserts that retaining the rule in its current form. For example, many, if not most, consumers have not received their eyeglass prescription as required by the eyeglass prescription release rule. OAA did not provide any further details about the survey or its methodology. By contrast, commenters who argue for repeal of the eyeglass prescription rule generally also urge the agency to adopt an “upon request” standard if the rule is retained. According to AOA, many, if not most, patients want to purchase their eyeglasses from the eye care practitioners providing their eye

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19. See, e.g., F. Bassett, #7; N. Simonetti, #13; see also K. Kinsey, #53 (many consumers, especially the elderly, do not know they can shop around).
20. OAA, #120 at 1, 9.
21. Id. at 7–8.
22. See, e.g., OAA, #120 at 9.
23. Lens Express, #113 at 4–5; OAA, #120 at 9. In addition, several consumers commented that they had never received their eyeglass prescription as required by the eyeglass prescription release rule. See, e.g., D. Ingraham, #44 (consumer unable to get copy of eyeglass prescription); J. Bassett, #7 (eye doctor did not release prescription until after he purchased eyeglasses; he did not ask); N. Simonetti, #13 (consumer has never been given prescription and did not ask because he did not know of his right to obtain prescription).
24. OAA, #120 at 9. OAA did not provide any further details about the survey or its methodology.
examination, or from an affiliated optical chain. Commenters supporting this revision of the rule contend that patients generally are aware of their right to obtain their eyeglass prescriptions, and that those who want their prescriptions routinely ask for and receive them. As such, these commenters argue, the automatic release of eyeglass prescriptions to all patients, including those who do not want them, is inefficient and wasteful. 

One commenter, the Society for Excellence in Eyecare ("SEE"), a professional society of clinical ophthalmic surgeons, urged the Commission to modify the rule to require physicians to provide an eyeglass prescription only when appropriate in the physician’s opinion or at the request of the patient. SEE suggests that many patients do not need a new prescription each time they visit an eye doctor because their prescription has not changed. According to SEE, giving patients a prescription under such circumstances probably leads many patients to believe that the prescription must be filled.

3. Overlap or Conflict With Other Laws

The request for public comment also asked for comments on whether the Ophthalmic Practice Rules overlap or conflict with other federal, state, or local laws or regulations. Several commenters respond that the eyeglass prescription release rule overlaps with or duplicates laws in some states, such as California and Texas, which already require the release of eyeglass prescriptions. These commenters state that, at least as to those particular states, the existence of the state law makes the federal requirement unnecessary. OAA comments that optometric regulations in seven states conflict with the eyeglass prescription release rule’s automatic release requirement by requiring the release of eyeglass prescriptions only upon the request of the patient. OAA further states that some of these state regulations make the prescription release contingent upon a patient’s fulfillment of all financial obligations. Finally, OAA states that Oklahoma’s optometric regulations are inconsistent with the disclaimer provisions in the Rules.

B. Commission’s Determinations Regarding Eyeglass Prescription Release Rule

The Commission has determined not to initiate a proceeding to repeal the eyeglass prescription release requirement. Some eye care practitioners may release prescriptions upon request in the absence of a federal release requirement. The evidence in the record, however, suggests that some eye care practitioners continue to refuse to release eyeglass prescriptions, even though this conduct has been unlawful under the Rules for nearly twenty-five years. If the eyeglass prescription release rule were eliminated, additional eye care practitioners might refuse to release eyeglass prescriptions so that they could receive the economic benefits from inducing patients to purchase both an eye exam and eyeglasses from them. Because release might not occur in the absence of federal release requirement and because release of prescriptions enhances consumer choice at minimal compliance cost to eye care practitioners, the FTC has decided to retain the eyeglass prescription release rule. The Commission also has decided not to commence a proceeding to modify the rule so that eye care practitioners are only required to release eyeglass prescriptions upon request. The comments submitted indicate that some consumers still are not aware of their right under the rule to obtain their eyeglass prescription from their eye care practitioner. In the absence of automatic release, these consumers may not know to ask for their prescription, or their eye care practitioner may discourage them from requesting it. With automatic release, these consumers will receive their prescription so that they can comparison shop among eyeglass sellers if they choose to do so. The record also shows that the burden on eye care practitioners in releasing prescriptions is minimal. Moreover, the recently enacted Fairness to Contact Lens Consumers Act provides for automatic release of contact lens prescriptions, and thus maintaining automatic release of eyeglass prescriptions provides consistency between the two release requirements. In light of all these factors, the FTC declines to start a proceeding to amend the rule to require release of eyeglass prescriptions only upon request.

Finally, the Commission concludes that the eyeglass prescription release rule does not conflict with other laws. The rule does not conflict with the optometric regulations cited by OAA, because eye care practitioners can comply with both the federal and the state requirements. The state laws cited by OAA require eye care practitioners to release eyeglass prescriptions upon request. These laws do not prohibit eye care practitioners from automatically releasing eyeglass prescriptions, as required by the rule. Moreover, there is no information in the record that any states are interpreting their laws in such a way as to conflict with application of the federal requirements.

C. Other Issues Related to Ophthalmic Practice Rules

1. Waivers and Disclaimers (16 CFR 456.2(d))

The request for public comment on the Ophthalmic Practice Rules also asked whether any changes should be made to the prohibition in Section 456.2(d) against the use of certain waivers or disclaimers of liability by eye care practitioners, or to the Commission’s interpretation of that provision.

Section 456.2(d) prohibits eye care practitioners from placing on an eyeglass prescription, requiring a patient to sign, or delivering to a patient, any waiver or disclaimer of liability for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller. Section 456.2(d) was originally promulgated because disclaimers “may have the effect of making consumers erroneously believe that other dispensers are not qualified to dispense their eyeglasses and discouraging consumers from shopping around.”

Section 456.4 states that eye care practitioners are not liable under the Rules for the ophthalmic goods and services that another seller has dispensed. The FTC has interpreted Section 456.2(d) consistent with Section 456.4 to allow eye care practitioners to make truthful and non-misleading statements on prescriptions that sellers of ophthalmic goods and services are.

38 The Illinois Association of Ophthalmology, while supporting the rule as is, states that most consumers are aware that they are entitled to receive their eyeglass prescriptions. Illinois Association of Ophthalmology, #66 at 2.

39 AOA, #111 at 2; COA, #112 at 2–3, 5.

37 AOA, #120 at 5–6.
responsible for harm caused by the products they sell. For example, an eye care practitioner may state on a prescription that "the person who dispenses your eyeglasses is responsible for their accuracy." The eye care practitioner, however, may not include a waiver or disclaimer of its own liability along with such a statement.44

COA requests that the Commission amend the Rules to allow disclaimers of liability for the accuracy of the ophthalmic goods and services dispensed by another seller.45 COA contends that it is unlikely under state tort law that an eye care practitioner would be held liable for the negligence or breach of warranty of an independent third party who provided ophthalmic goods to the practitioner’s patients. As such, COA asserts that a disclaimer of liability provides truthful and useful information to the patient, alerting the consumer to the possibility of a dispute concerning such liability.46 The AOA similarly requests that the Rule be amended to permit eye care practitioners to include on prescriptions truthful and non-misleading disclaimers of liability for the actions of sellers of ophthalmic goods and services.

OAAs also argue that the Rules should be amended to require that eye care practitioners affirmatively state that they are liable for errors in prescriptions even if another seller, such as an optician, fills the prescription. OAA believes that in the absence of such a statement, some eye care practitioners may mislead their patients into believing that the eye care practitioner will not be liable in these circumstances.47 The OAG and several opticians filed similar comments, stating that eye care practitioners often include statements on prescriptions implying that if a seller other than the eye care practitioner fills the prescription, the goods or services sold may be inferior. These commenters want the Rules revised to limit the statements made on prescriptions to prevent statements that imply that the goods or services that non-eye care practitioners sell are inferior.48

The Commission has determined to retain Section 456.2(d) in its current form. No evidence was submitted that indicates that its restrictions on the use of disclaimers and waivers are no longer needed to prevent harm to consumers. In addition, because of its long-standing and consistent interpretation that the Rules allow eye care practitioners to make truthful and non-misleading statements that other sellers are liable for the harm their own products cause, it is not necessary to amend the Rules to explicitly permit such statements. Finally, the Commission believes that case-by-case law enforcement under section 5 of the FTC Act is a more effective means than rulemaking of addressing any false or misleading statements by eye care practitioners on prescriptions as to their liability for prescription errors or the quality of other sellers’ goods and services.

2. Other Proposals

The OAA also recommends that the Commission amend the Ophthalmic Practice Rules to prohibit the use of expiration dates for eyeglass prescriptions, with exceptions for specific, well-defined medical reasons. OAA states that practitioners currently use arbitrarily determined and unjustifiable expiration dates, such as six months or one year, to deter consumers from using their eyeglass prescriptions.49

The Commission declines to initiate a proceeding seeking to amend the Rules to set expiration dates for eyeglass prescriptions. As explained above, the purpose of the Rules is to prohibit acts and practices that deter consumers from comparison shopping for eyeglasses. There is no evidence in the record that eye care practitioners are using expiration dates as a means of impeding the ability of consumers to purchase eyeglasses from other sellers or otherwise causing consumer injury. In the absence of such evidence, the Commission has decided not to consider setting expiration dates for eyeglass prescriptions.50

IV. Conclusion

For the foregoing reasons, the Commission has determined to retain the Ophthalmic Practices Rules in their current form.

List of Subjects in 16 CFR Part 456

Advertising, Medical devices, Ophthalmic goods and services, Trade practices.


By direction of the Commission.

Donald S. Clark,
Secretary.

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44 1989 Statement of Basis and Purpose, supra note 5, 54 FR at 10299. The Commission’s interpretation of this provision originally was set forth at 43 FR 46296–46297 (Oct. 6, 1978).

45 OAA, #112 at 6.

46 COA, #112 at 6.

47 OAA, #120 at 13. OAA does not address the point made by the AOA and COA.

48 See, e.g., OAG, #60; E. Carter, #45; D. Drake, #55; All About Vision Center, #56; Price and Wood Opticians, #72.

49 OAA, #120 at 3–4.

50 The Commission notes that Congress has established a minimum expiration date of one year for contact lens prescriptions, with an exception for cases in which medical reasons warrant a shorter time period. See 15 U.S.C. 7604. However, different considerations may apply to contact lenses than to eyeglasses, and, in any event, the record in this regulatory review does not indicate consumer injury that would support a rulemaking proceeding by the Commission to set an expiration date for eyeglass prescriptions.