

you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 26, 2019. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

**Heather Hipsley,**

*Deputy General Counsel.*

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**BILLING CODE 6750-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FTC requests that the Office of Management and Budget (OMB) extend for three years the current PRA clearance for information collection requirements contained in the Contact Lens Rule (Rule). That clearance expires on October 31, 2019.

**DATES:** Comments must be received by October 28, 2019.

**ADDRESSES:** Comments in response to this notice should be submitted to the OMB Desk Officer for the Federal Trade Commission within 30 days of this notice. You may submit comments using any of the following methods:

*Electronic:* Write "Contact Lens Rule: PRA Comment, P072108," on your comment and file your comment online at <https://www.regulations.gov>, by following the instructions on the web-based form.

*Email:* [MBX.OMB.OIRA.Submission@OMB.eop.gov](mailto:MBX.OMB.OIRA.Submission@OMB.eop.gov).

*Fax:* (202) 395-5806.

*Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Paul Spelman, Attorney, Division of Advertising Practices, Bureau of

Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Drop CC-10528, Washington, DC 20580, at (202) 326-2487.

#### SUPPLEMENTARY INFORMATION:

*Title:* Contact Lens Rule (Rule), 16 CFR part 315.

*OMB Control Number:* 3084-0127.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The Rule was promulgated by the FTC pursuant to the Fairness to Contact Lens Consumers Act (FCLCA), Public Law 108-164 (Dec. 6, 2003), which was enacted to enable consumers to purchase contact lenses from the seller of their choice. The Rule became effective on August 2, 2004. As mandated by the FCLCA, the Rule requires the release and verification of contact lens prescriptions which are generally valid for one year and contains recordkeeping requirements applying to both prescribers and sellers of contact lenses.

Specifically, the Rule requires that prescribers provide a copy of the prescription to the consumer upon the completion of a contact lens fitting, even if the patient does not request it, and verify or provide prescriptions to authorized third parties. The Rule also mandates that a contact lens seller may sell contact lenses only in accordance with a prescription that the seller either: (a) Has received from the patient or prescriber; or (b) has verified through direct communication with the prescriber. In addition, the Rule imposes recordkeeping requirements on contact lens prescribers and sellers. For example, the Rule requires prescribers to document in their patients' records the medical reasons for setting a contact lens prescription expiration date of less than one year. The Rule requires contact lens sellers to maintain records for three years of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, which they receive directly from customers or prescribers.

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

On July 5, 2019, the FTC sought comment on the information collection requirements associated with the Rule. 84 FR 32170. The FTC received no

comments that were germane to the issues that the agency sought comment on pursuant to the Paperwork Reduction Act (PRA) renewal request. Pursuant to OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 84 FR 32170.

*Likely Respondents:* Contact lens prescribers and contact lens sellers.

*Estimated Annual Hours Burden:* 2,104,050 hours (derived from 1,045,650 hours + 1,058,400 hours).

- *Contact Lens Prescribers:* 750,000 hours (45 million contact lens wearers × 1 minute per prescription/60 minutes) + 295,650 hours (3,547,800 verification requests × 3 minutes/60 minutes) = 1,045,650 hours

- *Contact Lens Sellers:* 985,500 hours (11,826,000 orders × 5 minutes/60 minutes) + 72,900 burden hours (4,374,000 orders × 1 minute/60 minutes) = 1,058,400 hours

*Estimated Annual Cost Burden:* \$84,548,448, which is derived from (\$57.68 × 888,802.5 optometrist hours) + (\$98.02 × 156,847.5 ophthalmologist hours) + (\$16.92 × 1,058,400 office clerk hours).<sup>1</sup>

#### Request for Comment

Your comment—including your name and your state—will be placed on the public record of this proceeding at the <https://www.regulations.gov> website. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or

<sup>1</sup> The hourly wage rates for sales and related workers are based on mean hourly wages found at <https://www.bls.gov/news.release/ocwage.htm> ("Occupational Employment and Wages—May 2018," U.S. Department of Labor, released March 2019, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018").

confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

**Heather Hipsley,**

*Deputy General Counsel.*

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements of its Affiliate Marketing Rule, which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the provisions (subpart C) of the CFPB’s Regulation V regarding other entities (“CFPB Rule”). The current clearance expires on January 31, 2020.

**DATES:** Comments must be filed by November 26, 2019.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411” on your comment, and file your comment online at <https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Katherine McCarron, Attorney, Division of Privacy and Identity Protection,

Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Room CC-8232, Washington, DC 20580, (202) 326-2333.

**SUPPLEMENTARY INFORMATION:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was enacted on July 21, 2010.<sup>1</sup> The Dodd-Frank Act transferred to the CFPB most of the FTC’s rulemaking authority for the Affiliate Marketing provisions of the Fair Credit Reporting Act (“FCRA”).<sup>2</sup> The FTC retained rulemaking authority for its Affiliate Marketing Rule (16 CFR 680) solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act as predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.<sup>3</sup> Additionally, the FTC shares enforcement authority with the CFPB for provisions of Regulation V subpart C (12 CFR 1022.21) that apply to entities other than those specified above.

As mandated by section 214 of the Fair and Accurate Credit Transactions Act (“FACT Act”), Public Law 108-159 (Dec. 6, 2003), the Affiliate Marketing Rule (“Rule”) requires covered entities to provide consumers with notice and an opportunity to opt out of the use of certain information before sending marketing solicitations. The Rule generally provides that, if a company communicates certain information about a consumer (eligibility information) to an affiliate, the affiliate may not use it to make or send solicitations to the consumer unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and does not opt out.

To minimize compliance costs and burdens for entities, particularly any small businesses that may be affected, the Rule contains model disclosures and opt-out notices that may be used to satisfy the statutory requirements. The Rule also gives covered entities flexibility to satisfy the notice and opt-out requirement. Covered entities may send the consumer a free-standing opt-out notice to satisfy the Rule’s requirements or add the opt-out notice to privacy notices already provided to consumers, such as those provided in accordance with the provisions of Title V, subtitle A of the Gramm Leach Bliley Act (“GLBA”).<sup>4</sup> As a result, the time necessary to prepare or incorporate an opt-out notice is likely to be minimal because covered entities may either use the model disclosure verbatim or base

their own disclosures upon it. Moreover, verbatim adoption of the model notice does not constitute a PRA “collection of information.”<sup>5</sup> The Rule also provides that affiliated companies may send a joint disclosure to consumers, thereby eliminating the need for each affiliate to send a separate disclosure. Staff anticipates that affiliated entities will choose to send a joint notice, which will reduce the number of notices required under the Rule.

### Burden Statement

Under the PRA, 44 U.S.C. 3501-3521, the FTC is requesting that OMB renew the clearance (OMB Control Number 3084-0131) for the information collection burden associated with the Rule.<sup>6</sup> Staff estimates that there are approximately 54,753 franchise/new car and independent/used car dealers in the U.S.<sup>7</sup> Applying an estimated rate of affiliation of 16.75%, staff estimates that there are approximately 9,171 motor vehicle dealerships in affiliated families that may be subject to the Rule’s affiliate sharing obligations. Staff further estimates an average of five businesses per family or affiliated relationship, and anticipates that affiliated entities will choose to send a joint notice as permitted by the Rule. Therefore, staff estimates that approximately 1,834 business families would be subject to the Rule.

Staff assumes that all or nearly all motor vehicles subject to the Rule’s provisions are also subject to the Commission’s Privacy of Consumer Financial Information Rule under the Gramm-Leach-Bliley Act (16 CFR 313) (“Privacy Rule”). Entities that are subject to the Commission’s GLBA

<sup>5</sup> “The public disclosure of information originally supplied by the Federal government to the recipient for purpose of disclosure to the public is not included within [the definition of collection of information].” 5 CFR 1320.3(c)(2).

<sup>6</sup> While the FTC shares enforcement authority with the Federal Reserve System, Commodity Futures Trading Commission, National Credit Union Administration, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, for the Consumer Financial Protection Bureau’s counterpart affiliate sharing rule, Regulation V (Subpart C), 12 CFR 1022.21, the CFPB has assumed 95% of the burden associated with its affiliate sharing rule. See Consumer Financial Protection Bureau, *Agency Information Collection Activities: Submission for OMB Review; Comment Request*, 82 FR 32,686 (2017); CFPB Supporting Statement, *Fair Credit Reporting Act (Regulation V)* 12 CFR 1022, OMB Control Number: 3170-0002 (2017). In addition, the CFPB has estimated that the burden associated with Regulation V’s affiliate sharing provisions is *de minimis*.

<sup>7</sup> This figure is based on estimates by the National Automobile Dealers Association and the National Independent Automobile Dealers Association. See, e.g., *NADA Data 2018: Annual Report*; *NIADA.com*.

<sup>1</sup> Public Law 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 15 U.S.C. 1681 *et seq.*

<sup>3</sup> See Dodd-Frank Act, at section 1029 (a), (c).

<sup>4</sup> 15 U.S.C. 6801 *et seq.*