July 19, 2016

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580

Re: Contact Lens Rule File No. P054510

1-800 CONTACTS, Inc. ("1-800 CONTACTS" "1-800" or "the Company") respectfully submits this comment in response to the Federal Trade Commission's ("FTC" or "Commission") request for comments in seeking to extend Office of Management and Budget ("OMB") approval under the Paperwork Reduction Act ("PRA") for the information collection requirements of the Contact Lens Rule ("CLR" or "Rule").

1-800 CONTACTS is the largest seller of contact lenses in the United States through its website, smartphone application and toll-free number. Established in 1995, 1-800 has extensive firsthand experience with the operation of the CLR since it was first promulgated more than ten years ago. 1-800 agrees with the FTC that the information collection costs associated with the CLR are more than justified by the benefits to consumers. Due in large part to the Fairness to Contact Lens Consumers Act (the "FCLCA") and the CLR, today the more than 41 million American consumers who wear contact lenses have greater choice and convenience and more affordable prices.

While 1-800 strongly believes that the current information costs associated with the Rule are reasonable and justified, the Company submits this brief comment to highlight two areas where the FTC overestimates the current burden on prescribers, and to provide its views on "ways to minimize the burden of the collection of information on those who are to respond."[1] In particular, we submit that greater prescriber compliance with the CLR would not only advance the procompetitive goals of the Rule, it would reduce total compliance costs for both prescribers and sellers.

Overestimate of Burden Placed on Prescribers

In its 2016 estimate of the current costs for compliance with the CLR, the Commission estimates that prescribers spend 683,333 hours annually complying with the requirement to release prescriptions to patients. This estimate is based on the assumption that prescribers are required to issue a new prescription to all of their patients annually (for all 50 states) and that they automatically release a copy of that prescription to their patients during this annual visit.

[1] Agency Information Collection Activities; Proposed Collection, Comment Request, May 20, 2016, 81 Fed. Reg. 31938-41 ("PRA Request").

Neither assumption is true. First, the CLR does not require an annual prescription in those states that have passed laws that require a longer prescription length. Section 315.6(a) of the CLR provides that a contact lens prescription expires no less than one year from issuance or in accordance with state law, whichever is longer.[2] Several states have adopted a two-year minimum, including Florida, Minnesota, New Mexico, Washington and Utah.[3] Consequently, the true compliance burden for prescribers is lower than the FTC estimate, which assumes that prescribers are required to provide patients with a new prescription annually. While internal 1-800 records show that the majority of prescribers in two-year states violate the CLR and issue prescriptions that expire in less than two years, those costs cannot be attributed to the Rule.[4]

In addition, the FTC's current estimate of prescriber burden, as well as estimates submitted to and approved by OMB in 2007, 2010 and 2013, all assume that prescribers routinely provide patients with a copy of their contact lens prescription after a fitting. However, actual prescription release is the exception rather than the norm. In its comment on the FTC's ten-year review of the CLR, 1-800 provided evidence showing that only 35% of contact lens wearers (about 14 million of the 41 million wearers in 2015) are automatically provided with a copy of their prescription at the completion of their contact lens fitting, as required by the Rule. Nearly half of all contact lens wearers today do not know they have a right to automatically receive a copy of their prescription, and approximately 36% of contact lenses wearers leave their prescriber's office without a copy in hand.[5] Consequently, prescribers today are not actually bearing even the minimal prescription release costs that OMB has approved as reasonable in past years. In each prior PRA submission, the FTC has assumed a level of compliance that has simply never existed in this market. While prescribers have always alleged burden, in reality, they have gotten a pass on their compliance obligations.

Minimizing the Cost of Compliance

Based on the FTC's own numbers, the routine violation of the CLR's central mandate—automatic prescription release to patients—is raising compliance costs for both prescribers and sellers. According to the FTC's estimates, it takes far less time for a prescriber to provide a

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[2] 16 CFR 315.6.

[3] Fla. Stat. §484.012(2), Minn. Stat. §145.712.2, N.M. Stat. Ann. §61-2-10.4(A)(5), ARCW §18.195.030(1)(d), UCA §58-16a-102(3)(b)(ii).

[4] In a sample of prescriptions provided to 1-800 CONTACTS during 2015, more than 70% of prescriptions written in states with a two-year minimum had an expiration date less than two years from the issue date. While patients in two-year states may wish to see their prescriber more often, and the prescriber may wish to provide a new prescription each time the patient is examined, the CLR does not require an annual prescription in these states. Voluntary action that is not required by the Rule, as well as conduct that actually violates the Rule, should not be included in an estimate of burden. CFR 315.6. According to 2015 U.S. Census data, 11% of the population lives in states with a two-year minimum. Assuming that the percentage of state residents that wear contact lenses is constant across states, that would mean that in 2015, the CLR required only biennial release to approximately 4.7 million contact lens wearers.

[5] Comments of 1-800 CONTACTS, Inc. on the Contact Lens Rule; 16 CFR Part 315, Exhibit B, submitted October 26, 2015, ("1-800 CLR Comment") *available at* https://www.ftc.gov/policy/public-comments/2015/10/26/comment-00568. Consequently, the time prescribers currently spent complying with the automatic release mandate is 35% of the FTC's 683,333 hour estimate or approximately 239,167 hours.

patient with a copy of her prescription than to respond to a verification request in those limited number of cases where an order is inaccurate, or a prescription is invalid or expired. As the FTC also correctly assumes, it takes less time for a seller to comply with the CLR when it receives a copy of the customer's prescription.[6]

Consequently, 1-800 respectfully suggests that vigorous enforcement activity by the FTC would significantly reduce the overall cost of CLR compliance by encouraging prescribers to automatically provide each patient with a copy of her contact lens prescription, as required by the Rule. This in turn would reduce the costs of the verification system for both prescribers and sellers. Based on the FTC's own estimates, the recordkeeping burden on sellers is 80 percent lower where that seller has a copy of a customer's prescription and is not required to verify the order.

To reinforce its enforcement agenda and create a strong deterrent against continuing violations, 1-800 also recommends that the FTC require that prescribers provide patients with a written notice of their legal right to receive a copy of their prescription immediately upon completion of a contact lens fitting, and that prescribers be required to maintain copies of the signed notices for a period of three years.[7] As the FTC acknowledged in seeking these comments, "[w]ithout the required records, it would be difficult to either ensure entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule."[8] 1-800 respectfully submits that any minimal cost associated with providing patients a "Bill of Rights" will be more than justified by the cost reductions that will follow greater compliance with the central mandate of the CLR.

Respectfully submitted,

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[6] For purposes of this comment, 1-800 takes the FTC's estimates of seller burden as given. Our purpose in this comment is to emphasize that, even based on the FTC's own assumptions, costs per order are 80 percent lower when a seller has a copy of the customer's prescription and is not required to verify an order.

[7] For a more detailed discussion of the proposed "Patient Bill of Rights" see 1-800 CLR Comment, pp. 21-23.

[8] PRA Request at 31938.

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