

Federal Trade Commission

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Commission, its employees, and its representatives.

(3) No prescriber shall include an expiration date on a prescription that is less than the period of time that he or she recommends for a reexamination of the patient that is medically necessary.

§ 315.7 Content of advertisements and other representations.

Any person who engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

§ 315.8 Prohibition of certain waivers.

A prescriber may not place on a prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

§ 315.9 Enforcement.

Any violation of this Rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices, and the Commission will enforce this Rule in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

§ 315.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 315.11 Effect on state and local laws.

(a) State and local laws and regulations that establish a prescription expiration date of less than one year or that restrict prescription release or re-

quire active verification are preempted.

(b) Any other State or local laws or regulations that are inconsistent with the Act or this part are preempted to the extent of the inconsistency.

PART 316—RULES IMPLEMENTING THE CAN-SPAM ACT OF 2003

AUTHORITY: Pub. L. 108-187, 117 Stat. 2699, 15 U.S.C. 7701 *et seq.*

SOURCE: 69 FR 21033, Apr. 19, 2004, unless otherwise noted.

§ 316.1 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

(a) Any person who initiates, to a protected computer, the transmission of a commercial electronic mail message that includes sexually oriented material must:

(1) Exclude sexually oriented materials from the subject heading of the electronic mail message and include in the subject heading the phrase "SEXUALLY-EXPLICIT:" in capital letters as the first nineteen (19) characters at the beginning of the subject line;¹

(2) Provide that the content of the message that is initially viewable by the recipient, when the message is opened by any recipient and absent any further actions by the recipient, include only the following information:

(i) The phrase "SEXUALLY-EXPLICIT:" in a clear and conspicuous manner;²

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based

¹The phrase "SEXUALLY-EXPLICIT" comprises 17 characters, including the dash between the two words. The colon (:) and the space following the phrase are the 18th and 19th characters.

²This phrase consists of nineteen (19) characters and is identical to the phrase required in § 316.1(a)(1) of this Rule.

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mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) Clear and conspicuous display of a valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following such instructions.

(b) *Prior affirmative consent.* Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(c) *Definitions.* (1) The definition of the term “affirmative consent” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(1).

(2) “Character” means an element of the American Standard Code for Information Interchange (“ASCII”) character set.

(3) The definition of the term “commercial electronic mail message” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(2).

(4) The definition of the term “electronic mail address” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(5).

(5) The definition of the term “electronic mail message” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(6).

(6) The definition of the term “initiate” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(9).

(7) The definition of the term “Internet” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(10).

(8) The definition of the term “procure” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(12).

(9) The definition of the term “protected computer” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(13).

(10) The definition of the term “recipient” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(14).

(11) The definition of the term “routine conveyance” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(15).

(12) The definition of the term “sender” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(16).

(13) The definition of the term “transactional or relationship messages” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(17).

(14) The definition of the term “sexually oriented material” is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7704(d)(4).

(d) *Severability.* The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission’s intention that the remaining provisions shall continue in effect.