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**RULE PROPOSALS**

**LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS**

*41 N.J.R. 1651(a)*

**Proposed Amendment:** *N.J.A.C. 13:33-8.8*

**Proposed New Rules:** *N.J.A.C. 13:33-9*

[Click here to view Interested Persons Statement](#)

**Fee Schedule; Registration of Out-Of-State Replacement Contact Lenses Sellers**

Authorized By: State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, Dorcas O'Neal, Executive Director.

Authority: *N.J.S.A. 52:17B-41.13*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-114.

Submit written comments by June 19, 2009 to:

Dorcas O'Neal, Executive Director  
State Board of Examiners of Ophthalmic Dispensers and  
Ophthalmic Technicians  
PO Box 45031  
Newark, NJ 07101

The agency proposal follows:

**Summary**

The State Board of Examiners of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians (the Board) proposes to amend N.J.A.C. [page=1652] 13:33-8.8 to clarify language and to introduce a new fee for the registration of out-of-State replacement contact lens sellers. The Board also proposes new Subchapter 9 to set standards for registration of out-of-State sellers of replacement contact lenses.

Although Federal law (specifically the Fairness to Contact Lens Consumer Act, 15 U.S.C. §§7601-7610) and regulations do not specifically permit out-of-State sellers of replacement contact lenses to deliver replacement contact lenses to consumers in New Jersey, the Federal Trade Commission has taken the position that requiring such out-of-State sellers to obtain plenary licensure in all of the states to which they deliver replacement contact lenses would increase costs and decrease consumer options. The Federal Trade Commission, however, has suggested simple registration requirements may not engender the same costs or limitation on consumer choice. In order for the Board to assist and protect consumers who receive replacement contact lenses from these out-of-State individuals and entities, the Board is following the Federal Trade Commission suggestion and proposes new Subchapter 9 to set forth a simple form of registration for out-of-State replacement contact lens sellers. Proposed new N.J.A.C. 13:33-9.1 sets forth the purpose and scope of Subchapter 9. Proposed new N.J.A.C. 13:33-9.2 sets forth definitions used throughout the subchapter. This rule distinguishes dispensing contact lenses, which is the provision of contact lenses by a licensed ophthalmic dispenser or other New Jersey licensed health care professional whose scope of practice includes dispensing contact lenses, from selling replacement contact lenses, which is the provision of replacement contact lenses by registered out-of-State sellers of replacement contact lenses.

Proposed new N.J.A.C. 13:33-9.3 requires persons that do not have offices, stores, warehouses or other facilities in New Jersey to register with the Board as out-of-State sellers of replacement contact lenses if they seek to sell replacement contact lenses to consumers in New Jersey. This requirement will become effective six months after the rule is adopted. An out-of-State seller of replacement contact lenses may not sell the initial set of contact lenses based upon a new prescription. Proposed new N.J.A.C. 13:33-9.4 sets forth the information that a person must provide the Board when registering as an out-of-State seller of replacement contact lenses. Proposed new N.J.A.C. 13:33-9.5 requires a registered out-of-State seller of replacement contact lenses to inform the Board in writing if any of the information provided pursuant to N.J.A.C. 13:33-9.4 changes or if the seller's ability to dispense contact lenses in another state or country changes due to a conviction or judgment in a disciplinary action.

Proposed new N.J.A.C. 13:33-9.6 requires registered out-of-State seller of replacement contact lenses to comply with the Fairness to Contact Lens Consumers Act and the Federal Trade Commission's Contact Lens Rule. The Contact Lens Rule imposes requirements for the release and verification of contact lens prescriptions and the sale of replacement contact lenses.

Proposed new N.J.A.C. 13:33-9.7 requires registered out-of-State sellers of replacement contact lenses to renew registration every two years. Proposed new N.J.A.C. 13:33-9.8 states that registered out-of-State sellers of replacement contact lenses that do not comply with Subchapter 9 or the Consumer Fraud Act will have their registration revoked and thereafter will not be authorized to sell replacement contact lenses in New Jersey.

The Board has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to *N.J.A.C. 1:30-3.3(a)5*, this notice is excepted from the rulemaking calendar requirement.

### **Social Impact**

The Board believes the proposed new rules will have a positive impact on society. The rules sets forth criteria for the registration of out-of-State sellers of replacement contact lenses. This ensures that the Board has sufficient contact information from of the out-of-State individuals and entities that sell replacement contact lenses to New Jersey consumers and that these individuals and entities are providing replacement contact lenses properly. The rules strike a balance, permitting increased competition, as mandated by the Federal Trade Commission, and additional consumer choice of vendors, yet provides accountability of out-of-State sellers to safely provide replacement contact lenses.

**Economic Impact**

The proposed new rules will have an economic impact on out-of-State individuals and entities that are selling replacement contact lenses to consumers in New Jersey. These individuals and entities will be required to register with the Board and pay the registration fee. They will also be required to provide a toll-free telephone line for consumers. The rules will not have an economic impact on individuals and entities that are physically located in New Jersey. These individuals and entities are currently required to obtain licensure to engage in the practice of contact lens dispensing pursuant to the Contact Lens Dispenser Act, P.L. 1991, c. 447 (*N.J.S.A. 52:17B-41.25 et seq.*).

**Federal Standards Statement**

This proposed new rules impose the same requirements as those imposed by the Federal Trade Commission's "Contact Lens Rule," 16 CFR 315, which is incorporated by reference. The rules do not exceed these Federal standards. The Contact Lens Rule and the Fairness to Contact Lens Consumer Act (*15 U.S.C. §§7601-7610*), which authorize the Federal Trade Commission to adopt regulations regarding prescription of contact lenses, did not explicitly permit out-of-State sellers of replacement contact lenses to provide contact lenses to New Jersey consumers. However, the Federal Trade Commission has suggested that requiring out-of-State sellers to obtain licensure would result in higher prices and lessen consumer options without significantly improving consumer safety. The Federal Trade Commission has suggested that states may impose registration requirements on out-of-State sellers of replacement contact lenses. The Board proposes these new rules in order to effectuate the Federal Trade Commission's suggestion.

**Jobs Impact**

The proposed new rules will not increase or decrease the number of jobs in New Jersey.

**Agriculture Industry Impact**

The proposed new rules will not have any impact on the agriculture industry of this State.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed new rules only apply to out-of-State individuals and entities that cannot be considered "small businesses" as defined in *N.J.S.A. 52:14B-17* because they are not businesses that are resident in New Jersey.

**Smart Growth Impact**

The Board does not anticipate that the proposed new rules will have any impact on smart growth or implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

**Housing Affordability Impact**

The proposed new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules concern registration requirements for out-of-State sellers of replacement contact lenses.

**Smart Growth Development Impact**

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the

State Development and Redevelopment Plan in New Jersey because the proposed rules concern registration requirements for out-of-State sellers of replacement contact lenses.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

[page=1653] CHAPTER 33

STATE BOARD OF **EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS**

SUBCHAPTER 8. GENERAL PROVISIONS

13:33-8.8 Fee schedule

(a) The following fees shall be charged by the Board [effective upon promulgation.]:

1.-13. (No change.)

**14. Registration as out-of-State seller of replacement contact lenses. ....  
.....200.00**

**SUBCHAPTER 9. REGISTRATION OF OUT-OF-STATE REPLACEMENT CONTACT LENS SELLERS**

**13:33-9.1 Purpose and scope**

**(a) The purpose of this subchapter is to set forth standards for registering sellers of replacement contact lenses located outside the State of New Jersey that ship, mail or deliver in any manner replacement contact lenses directly to consumers in New Jersey. This subchapter applies to persons that do not have offices, stores or warehouses in New Jersey and that sell replacement contact lenses to consumers in New Jersey.**

**(b) A person whose business is located in New Jersey and who sells replacement contact lenses shall either obtain a license as an ophthalmic dispenser from the Board or a New Jersey license as another health care professional whose scope of practice includes the dispensing of contact lenses.**

**13:33-9.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings:

**"Board" means the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians.**

**"Dispense contact lenses" means the provision of contact lenses by an individual licensed by the Board as an ophthalmic dispenser or another health care professional who is licensed in New Jersey and whose scope of practice includes the provision of contact lenses.**

**"Out-of-State seller of replacement contact lenses" means a person that does not have offices, stores, warehouses or other physical facilities in New Jersey and which sells replacement contact lenses directly to consumers in New Jersey.**

**"Person" means an entity, corporation or individual.**

**"Sell replacement contact lenses" means the provision of replacement contact lenses by a person that is registered with the Board as an out-of-State seller of replacement contact lenses.**

**13:33-9.3 Registration requirement**

(a) On or after (six months from the effective date of this subchapter), no person located outside New Jersey shall ship, mail or deliver in any manner replacement contact lenses directly to a consumer at a New Jersey address unless registered with the Board as an out-of-State seller of replacement contact lenses.

(b) An out-of-State seller of replacement contact lenses that is registered with the Board shall only sell replacement contact lenses.

(c) An out-of-State seller of replacement contact lenses that is registered with the Board shall not sell the initial set of contact lenses based upon a new prescription.

(d) If a person intends to dispense eyeglasses, sell the initial set of contact lenses based up on a new prescription or maintain an office in New Jersey, the person shall obtain a license as an ophthalmic dispenser.

**13:33-9.4 Registering as an out-of-State seller of replacement contact lenses**

(a) A person that seeks to register as an out-of-State seller of replacement contact lenses shall submit to the Board:

1. A completed registration form, which includes:

i. The name of the person;

ii. The structure of the business that employs the person (for example, a corporation, partnership or sole proprietorship);

iii. The street address of the home office of the person;

iv. The hours during which the business will be operated;

v. A toll-free telephone number, which consumers may call to ask questions and register complaints with the out-of-State seller of replacement contact lenses;

vi. Any trade names under which the person is doing business;

vii. A business telephone number, facsimile telephone number, email address and website address;

viii. A list of all jurisdictions in which the person is licensed or registered to dispense contact lenses, eyeglasses or replacement contact lenses;

ix. Any disciplinary, civil or criminal action that the person has been subject to in any other jurisdiction; and

x. The name, telephone number and location of a corporate officer who will be responsible for the actions of the entity in New Jersey;

2. Proof that the person is permitted to dispense contact lenses in the State in which the person's home office is located; and

**3. The registration fee as set forth in *N.J.A.C. 13:33-8.8*.**

**(b) Service of process to an address, which is on file with the Board shall be deemed adequate notice for the purposes of *N.J.A.C. 1:1-7.1*.**

**13:33-9.5 Board notification**

**(a) A registered out-of-State seller of replacement contact lenses shall inform the Board in writing of a change in any of the information required by *N.J.A.C. 13:33-9.4* within 30 days of the change.**

**(b) If a registered out-of-State seller of replacement contact lenses is the subject of a conviction or judgment in a disciplinary action in another state or country that affects his or her ability to dispense contact lenses in that state, the registered out-of-State seller of replacement contact lenses shall inform the Board within 30 days of the effective date of the disciplinary action.**

**13:33-9.6 Practice requirements**

**A registered out-of-State seller of replacement contact lenses shall comply with the Fairness to Contact Lens Consumers Act, 15 U.S.C. §§7601-7610, and the Federal Trade Commission's "Contact Lens Rule," 16 CFR 315, incorporated herein by reference.**

**13:33-9.7 Renewal of registration**

**Registration as an out-of-State seller of replacement contact lenses shall be valid for two years. Registration shall be renewed every two years by submitting the documents required by *N.J.A.C. 13:33-9.4*.**

**13:33-9.8 Duty to comply**

**A registered out-of-State seller of replacement contact lenses may have his or her registration denied, suspended or revoked or may otherwise be disciplined for failure to comply with the requirements of this subchapter or the Consumer Fraud Act, *N.J.S.A. 56:8-1 et seq.***