

# NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

## NOTICE OF EXEMPT RULEMAKING

### TITLE 13. PUBLIC SAFETY

### CHAPTER 11. BOARD OF FINGERPRINTING

[R07-334]

#### PREAMBLE

**1. Sections Affected**

R13-11-101  
R13-11-102  
R13-11-103  
R13-11-104  
R13-11-105  
R13-11-108  
R13-11-110  
R13-11-111

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 41-619.53(A)(2) and 41-1062(B)  
Implementing statute: A.R.S. § 41-619.55

**3. The effective date of the rules:**

September 19, 2007

**4. A list of all previous notices appearing in the *Register* addressing the exempt rule:**

None. This rulemaking is statutorily exempt from review pursuant to A.R.S. § 41-619.53(A)(2).

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Dennis Seavers, Executive Director  
Address: Board of Fingerprinting  
Mail Code 185  
P.O. Box 6129  
Phoenix, AZ 85005-6129  
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Telephone: (602) 265-3747  
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**6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**

Apart from stylistic changes to the rules, the purpose of the changes to the rules is to implement time-frames established by Laws 2007, Chapter 205, Section 3. These time-frames include the following: (1) 20 days from receipt of an application to expedited review; (2) 45 days from expedited review to hearing; and (3) 80 days from hearing to decision. The changes to the rules include a definition of "application" to specify what documents must be received before the 20-day time-frame (from receipt of application to expedited review) begins.

A.R.S. § 41-619.53(A)(2) exempts the proposed rules from A.R.S. Title 41, Chapter 6. In order to implement the time-frames in statutes, the Board of Fingerprinting is passing these rules without public comment. However, following publication of the rules, the Board will allow time for reasonable public notice and comments on the rules and will amend its rules as necessary.

**7. A reference to any study relevant to the rule that an agency reviewed and either proposes to rely on in its evalua-**

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tion of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

**8. A showing of good cause why the rules are necessary to promote the statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The preliminary summary of the economic, small business, and consumer impact:**

Not applicable (see A.R.S. § 41-619.53(A)(2))

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable

**11. A summary of the comments made regarding the rule and the agency response to them:**

Not applicable

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**

No

**15. The full text of the rules follows:**

TITLE 13. PUBLIC SAFETY

CHAPTER 11. BOARD OF FINGERPRINTING

ARTICLE 1. BOARD OF FINGERPRINTING

Section

- R13-11-101. Applicability
- R13-11-102. Definitions
- R13-11-103. Request for Good Cause Exception
- R13-11-104. Good Cause Exception Application
- R13-11-105. Expedited Review
- R13-11-108. Hearings
- R13-11-110. Rehearing or Review of Decision
- R13-11-111. Notification of Decision for Good Cause Exception

ARTICLE 1. BOARD OF FINGERPRINTING

**R13-11-101. Applicability**

This Article applies to activities and persons identified in A.R.S. Title 41, Chapter 3, Article 12, except that R13-11-111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card pursuant to under A.R.S. § 41-1758.03.

**R13-11-102. Definitions**

In this Article, the following definitions apply, unless the context otherwise requires:

1. "Appellant" means a person whose application for a fingerprint clearance card is denied or whose fingerprint clearance card is suspended by the Department; who is eligible to request a good cause exception from the Board pursuant to under A.R.S. § 41-1758.03; and who submits a request pursuant to according to R13-11-103(A).
2. "Applicant" means a person who applies for a fingerprint clearance card pursuant to under A.R.S. § 41-1758.03.
3. "Application" means all of the documents required by A.A.C. R13-11-104(A).
- 3-4. "Board" means the Board of Fingerprinting.
- 4-5. "Department" means the Department of Public Safety.
- 5-6. "Department's notice" means the notice of denial or suspension of a fingerprint clearance card that the Department sends to an applicant pursuant to under A.R.S. § 41-1758.04.

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- 6.7. "Expedited review" means an examination, in accordance with Board rules, of the documents an appellant submits by the Board or its hearing officer without the appellant being present.
- 7.8. "Good cause exception" means the issuance of a fingerprint clearance card to an appellant pursuant to under A.R.S. § 41-619.55.
- 8.9. "Hearing officer" means an administrative law judge or other person ~~hired~~ appointed by the Board, ~~or if an agreement exists between the Board and the Office of Administrative Hearings, appointed by the director of the Office of Administrative Hearings,~~ to determine good cause exceptions.
9. "~~Office~~" means the Office of Administrative Hearings.
10. "Request" means a person's written indication to the Board that he or she wishes to appeal for a good cause exception pursuant to under A.R.S. § 41-619.55, along with a copy of all pages of the Department's notice. A person's dated signature on the Department's notice shall suffice as a written indication.

**R13-11-103. Request for Good Cause Exception**

- A. No change
- B. The Board shall send an application package within five business days to an applicant if one of the following applies:
  1. The applicant meets the requirement of R13-11-103(A).
  2. With good cause, the applicant submits a request in excess of 30 calendar days of the date on the Department's notice. An applicant demonstrates good cause by showing that the request could not have been submitted on time, using reasonable diligence. An applicant's failure to inform the Department of a change in address shall not constitute grounds for good cause. The Board's executive director shall determine whether good cause exists.
  3. The applicant submits an incomplete request within 30 days of the Department's notice and subsequently completes the request. The Board shall determine a request incomplete if the request lacks one of the following:
    - a. A written indication that the applicant wishes to appeal for a good cause exception pursuant to under A.R.S. § 41-619.55, or
    - b. The Department's notice or any of its pages.
- C. No change
- D. No change

**R13-11-104. Good Cause Exception Application**

- A. ~~An appellant shall submit the following materials to the Board to establish good cause for an exception~~ An application shall consist of both the criminal history information provided by the Department and the following materials submitted by an appellant to the Board to establish good cause for an exception:
  1. The good cause exception application form prescribed by the Board. This form shall be notarized.
  2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
    - a. Both letters of reference shall be from individuals who have known the appellant for at least one year; and
    - b. At least one letter of reference shall be from the appellant's current or former employer or from an individual who has known the appellant for at least three years.
  3. If the Department's notice indicates that the Department could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the appellant either do not exist or have been purged.
  4. For any ~~arrests~~ charges that occurred five years or less prior to the date on the Department's notice, regardless of whether the ~~arrests~~ charges were listed on the Department's notice, the police report for each ~~arrest~~ charge and documents from the appropriate court showing the disposition of the charge.
  5. For every criminal conviction, regardless of whether the offenses were listed on the Department's notice, documents from the appropriate court showing that the appellant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the appellant either do not exist or have been purged. If the appellant has not met all judicially imposed obligations or sentencing conditions, the appellant shall provide a written statement indicating or documents from the appropriate court showing the status of the appellant's efforts toward meeting the obligations.
  6. A statement written by the appellant that explains each ~~arrest~~ charge, regardless of whether the ~~arrests~~ charges were listed on the Department's notice.
- B. The Board ~~shall or its hearing officer may~~ accept any other documents an appellant submits to demonstrate good cause for an exception, consistent with A.R.S. § 41-1062.
- C. ~~A good cause exception application shall be complete if it meets all the requirements of R13-11-104(A). A good cause exception application shall be incomplete if it does not meet all the requirements of R13-11-104(A).~~

**R13-11-105. Expedited Review**

- A. Within ~~30 business~~ 20 days of receiving a ~~complete an~~ application ~~package~~, the Board or its hearing officer shall conduct an expedited review. When determining whether the appellant should receive a good cause exception under an expedited review, the Board or its hearing officer shall consider the following:
  1. The criteria listed in R13-11-108(A); and
  2. Whether the documentation submitted in support of a good cause exception is sufficient to allow the Board or its

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hearing officer to grant a good cause exception, or whether the Board or its hearing officer require further documentation or oral testimony.

- B. If the Board or its hearing officer ~~determine~~ determines that the appellant is eligible for a good cause exception under an expedited review, the Board or its hearing officer shall grant the appellant a good cause exception.
- C. If the Board or its hearing officer determines that an appellant is not eligible for a good cause exception under an expedited review, the Board or its hearing officer shall direct the Board's executive director to schedule, ~~or request that the Office schedule,~~ a hearing ~~and inform the appellant of the determination in writing.~~ The Board's executive director shall give the appellant reasonable notice of the hearing in accordance with ~~the provisions of~~ A.R.S. § 41-1061. The hearing shall take place within 45 days after the expedited review.

**R13-11-108. Hearings**

- A. When determining whether an appellant should receive a good cause exception at a hearing, the Board or its hearing officer shall consider whether the appellant has shown to the Board or its hearing officer's satisfaction that the appellant is not awaiting trial on or has not been convicted of committing any of the offenses listed in A.R.S. § 41-1758.03 or that the person is successfully rehabilitated and is not a recidivist. The Board or its hearing officer shall consider the following:
  - 1. The extent of the appellant's criminal record;
  - 2. The length of time that has elapsed since the offense was committed;
  - 3. The nature of the offense;
  - 4. Any applicable mitigating circumstances;
  - 5. The degree to which the appellant participated in the offense; and
  - 6. The extent of the appellant's rehabilitation, including:
    - a. Completion of or progress toward completing probation, parole, or community supervision;
    - b. Completion of payment or progress toward paying restitution or other compensation for the offense;
    - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;
    - d. Personal references attesting to the appellant's rehabilitation; and
    - e. Witness testimony ~~that the appellant submits.~~
- B. Absent good cause, if the appellant or his or her representative fail to appear at a hearing, the Board or its hearing officer ~~shall proceed with the hearing and~~ may deny the applicant a good cause exception for failure to appear at the hearing. An appellant demonstrates good cause by showing that the appellant could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-106, using reasonable diligence. An appellant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board or its hearing officer shall determine whether good cause exists.
- C. The Board or its hearing officer shall grant or deny a good cause exception within 80 days of the hearing.

**R13-11-110. Rehearing or Review of Decision**

- A. An appellant may seek a review or rehearing of a Board ~~or hearing officer~~ decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board ~~must or its hearing officer shall~~ grant a request for review or rehearing for any of the following reasons materially affecting the rights of the appellant:
  - 1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
  - 2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
  - 3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
  - 4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.
- B. No change
- C. The Board ~~or its hearing officer~~ may grant a rehearing or review for any of the reasons in subsection A. The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.
- D. No change

**R13-11-111. Notification of Decision for Good Cause Exception**

- A. The Board shall notify the appellant in writing of the ~~Board's~~ Board or its hearing officer's decision and, ~~if the good cause exception is granted at a hearing,~~ transmit findings of fact and conclusions of law.
- B. When the Board or its hearing officer ~~grant~~ grants a good cause exception, the Board's executive director shall request, in writing, the Department to issue a fingerprint clearance card.