

# 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 2. ADMINISTRATION

#### CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

##### PREAMBLE

**1. Sections Affected**

R2-20-104  
R2-20-105

**Rulemaking Action**

Amend  
Amend

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

Authorizing statutes: A.R.S. §§ 16-956(D), 16-956(B)(4), and 16-958(F). Rulemaking by the Citizens Clean Elections Commission ("Commission") is not subject to Title 41, Chapter 6, Article 3, but instead is governed by A.R.S. § 16-956(D). A.R.S. § 16-956(D) provides that the "Commission rulemaking is exempt from Title 41, Chapter 6, Article 3, except that the Commission shall submit the rules for publication and the Secretary of State shall publish the rules in the *Arizona Administrative Register*. The Commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed."

Implementing statutes: A.R.S. §§ 16-940 through 16-961

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

The amendments to R2-20-104 were adopted by the CCEC on January 29, 2002, with public comment ending on April 1, 2002. Final adoption of the proposed changes to R2-20-104 occurred at a public meeting of the CCEC on April 2, 2002.

Amendments to R2-20-105 were initially adopted by the Commission on February 20, 2002. Public comment on the proposed amendments to the rule ended April 22, 2002, and final adoption of the rule's amendment occurred by the Commission on April 30, 2002. The rule became retroactively effective on that date when it was precleared by the United States Department of Justice.

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

None

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

Name: Colleen Connor, Executive Director  
Citizens Clean Elections Commission

Address: Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, AZ 85007

Telephone: (602) 364-3477

Fax: (602) 364-3487

E-mail: [www.ccec.state.az.us](http://www.ccec.state.az.us)

**6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Citizens Clean Elections Commission is complying with A.R.S. §§ 16-956(D), 16-956(B)(4), and 16-958(F). These statutes allow the Commission to enact rules to carry out the purposes and provisions of the Citizens Clean Elections Act (A.R.S. §§ 16-940 through 16-961). The Citizens Clean Elections Commission has promulgated amendments to R2-20-104 and R2-20-105 for the following reasons:

The new rules add provisions for the use of surplus funds so that incumbents may use surplus funds for limited purposes under R2-20-104(C) without jeopardizing their eligibility to be a participating candidate under the Clean Elections Act. In addition, the rules added in part R2-20-104(G) are intended to allow office-holders to raise money to pay

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for certain office-holder expenses without jeopardizing their eligibility to participate as a clean election candidate in the next election.

The additions to R2-20-104 regarding office-holder expenses and the use of surplus monies were made at the request of several office-holders from both the Republican and Democratic parties. The intention of the CCEC in enacting these changes is to facilitate participation in the clean elections system and to encourage communication by office-holders to their constituents.

In order to qualify for public funding, participating candidates (i.e., candidates who elect to participate in the public funding process as established by the Act) must submit an amount of valid qualifying contributions and accompanying slips equal to or greater than the minimum number required for the applicable office as set forth in A.R.S. § 16-950(D). For example, legislative candidates must obtain 200 valid contribution slips. A.R.S. § 16-950(D)(1).

In 2000, candidates who submitted an insufficient number of valid contribution slips were permitted to supplement their applications with new slips. This required the Office of the Secretary of State to take a new sample of the supplemental submission and, if necessary, refer the slips to the county election officials to recount and verify all of the submitted slips. Although the applicable statute was silent in regard to a second submission, the CCEC had promulgated old rule R2-20-109(C) that specifically permitted a supplemental submission of contribution slips.

The changes to R2-20-105 do not reflect a change of policy from the 2000 election because it still permits supplementation; however, the changes do create a threshold requirement for supplementation. Under the new rule, the sample of submitted slips must reach at least the 90 percent threshold for verification of all slips under A.R.S. § 16-950(C). If that 90 percent threshold is met, a candidate who ultimately fails to submit enough valid slips is permitted to submit an additional set of slips which are then checked and verified.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not 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 a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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

Not applicable

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

Not applicable

**11. A summary of the principal comments and the agency response to them:**

There were no public comments received by the Commission regarding this change.

**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 adopted as an emergency rule?**

No

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

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section

R2-20-104. Certification as a Participating Candidate

R2-20-105. Certification for Funding

ARTICLE 1. GENERAL PROVISIONS

**R2-20-104. Certification as a Participating Candidate**

- A.** Prior activities. Candidates who sought office in a prior election cycle as nonparticipating candidates and who seek certification as a participating candidate in the current election shall ensure before filing an application to become a participating candidate pursuant to A.R.S. § 16-947, that any monies in the candidate's current election campaign account in excess of permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), are:
1. Spent lawfully in a way that does not constitute a direct campaign purpose;
  2. Remitted to the Fund, in the case of permitted early contributions; or
  3. Transferred out of the account as disposal of surplus monies.
  4. Any monies in the prior election campaign account shall not be used in the current election for direct campaign purposes.
- B.** A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-905, but later chooses to run as a participating candidate, shall:
1. Make the change to participating candidate status during the exploratory period only;
  2. Return the amount of each contribution in excess of the \$100 individual contribution limit for participating candidates;
  3. Return all Political Action Committee (PAC) monies received;
  4. Not have spent any contributions exceeding \$100, or any part of contributions exceeding \$100;
  5. Comply with all provisions of A.R.S. § 16-941.
- C.** Surplus monies. Surplus monies from a candidate's campaign account for a prior election cycle may be used by that candidate for certain expenses without affecting that candidate's eligibility to become a participating candidate under the Act. Use of monies from a prior account is permissible only if the monies:
1. Are spent ~~during the exploratory period~~ prior to April 30 of an election year;
  2. ~~Are not used for the purpose of influencing an election;~~
  3. ~~Do not otherwise meet the definition of "expenditure" under A.R.S. § 16-901(8); and~~
  4. ~~The event or item purchased is completed or otherwise used and depleted prior to the commencement of the qualifying period~~ April 30 of an election year.
- D.** Application. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall submit a Commission-approved application to the Secretary of State and submit a copy to the Commission. At the time the candidate submits his or her application for certification, the candidate shall file, with the Commission, a campaign finance report reflecting all campaign activity to date, in accordance with A.R.S. § 16-915. In the application, a candidate shall certify under oath that the candidate:
1. Agrees to use all Clean Election funding for direct campaign purposes only;
  2. Has filed with the Commission a campaign finance report, showing all campaign activity to date in the current election cycle;
  3. Will comply with all requirements of the Act and Commission rules;
  4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
  5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
  6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
  7. Will permit an audit and examination of all receipts and expenditures including those made by the candidate, the candidate's authorized committee and any agent or person authorized to make expenditures on behalf of the candidate or committee. The candidate and the candidate's authorized committee shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate and authorized committee shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid;
  8. Will submit the name and mailing address of the person who is entitled to receive equalizing fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the committee treasurer;
  9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
  10. Will file all campaign finance reports with the Secretary of State in an electronic format.
- E.** If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods that do not exceed \$100, in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations. The total contributions for a candidate for governor shall not exceed \$40,000. For all other candidates, the total early contributions shall not exceed 10 percent of the sum of the original primary and general election spending limits;

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2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
  3. Make expenditures of personal monies of no more than \$500 for legislative candidates and no more than \$1000 for statewide office candidates;
  4. Conduct all activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account.
- F. Personal loans. A participating candidate may loan his or her campaign committee monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). These loans shall promptly be repaid with Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate or his or her campaign committee shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- G. ~~Monies raised for official duties~~ Officeholder Expenses. ~~During the exploratory period only~~ Prior to April 30 of an election year, an elected official may raise or spend money to defray the expense of performing ~~official~~ officeholder duties as follows:
1. The candidate ~~must~~ may first exhaust all surplus monies from ~~a~~ prior campaign accounts pursuant to subsection (C) or may use personal monies for officeholder expenses;
  2. Money raised shall be only from individuals and the maximum raised from an individual during the election cycle shall not exceed the early contribution limit ~~not exceed \$100 per individual that contributes~~;
  3. The sum of the money ~~Money~~ raised or spent shall not exceed two times the early contribution limit applicable to the officeholder's current office for the office sought by a participating candidate;
  4. For an officeholder's future campaign as a:
    - a. Participating candidate-
      - i. ~~Monies~~ Money raised pursuant to this subsection will not be deemed early contributions, and as long as such monies are spent prior to the end of the exploratory period and are not used for direct campaign purposes;
      - ii. Personal money spent pursuant to this subsection shall not apply to personal money limits provided in A.R.S. § 16-941(A)(2).
    - b. Nonparticipating candidate-
      - i. Money raised or spent pursuant to this subsection will not be calculated in matching funds to opponents as provided in A.R.S. § 16-952, and
      - ii. Money raised or spent pursuant to this subsection will not trigger the reporting requirements provided in A.R.S. §§ 16-941(D) and 16-958.
    - c. Any money raised or spent in excess of the limits established in this subsection, however, shall be calculated as early contributions or personal monies for participating candidates, or for matching funds and reporting requirements for nonparticipating candidates;
  5. Money raised or spent for officeholder expenses shall be reported under campaign finance reporting requirements pursuant to A.R.S. Title 16, Chapter 6, Article 1 as follows:
    - a. The officeholder shall establish an account for officeholder expenses, which shall be separate from any candidate campaign account;
    - b. The account shall be designated on the statement of organization as "Officeholder Expense Account;" and
    - c. Any money remaining in the officeholder expense account after April 30 of an election year shall either not be spent for the remainder of the calendar year, or shall be remitted to the clean elections fund;
  6. Money in the officeholder expense account shall not be used for direct campaign purposes or in connection with the officeholder's future campaign for elective office; and
  7. Permissible uses of the money in the officeholder expense account include:
    - a. Expenditures for office equipment and supplies;
    - b. Expenditures for work-related travel;
    - c. Donations to tax-exempt charitable organizations; or
    - d. Expenditures to meet or communicate with constituents.
- H. A participating candidate may raise early contributions for election to one office and choose to run for election to another office during the exploratory period only.
- I. A candidate may accept qualifying contributions before the candidate is certified as a participating candidate. A candidate who accepts qualifying contributions prior to being certified as a participating candidate shall file his or her application for certification no later than January 31 of an election year.
- J. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the act or rules, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose any other penalty the Commission deems appropriate.

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**R2-20-105. Certification for Funding**

- A. After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B. A participating candidate must submit to the Secretary of State a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer-reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Citizens Clean Elections Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.
- C. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. Nothing in this rule shall prohibit the use of direct mail to obtain qualifying contributions nor prohibit the contributor from also being the solicitor.
- D. The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
1. Unsigned by the contributor;
  2. Undated; or
  3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.
- E. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Election funds. If the result of the random sample is from ninety percent to one hundred ten percent of the slips needed to qualify for funding, a candidate who is denied clean elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G).
- F. The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the amount tendered will not be returned to a candidate if a candidate is denied clean campaign funding.
- G. In accordance with the procedure pursuant to A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is from ninety percent to one hundred ten percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:
1. The candidate files at least the minimum number of additional slips needed to qualify for funding.
  2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate, and
  3. The period for filing qualifying contributions slips has not expired.
- H. The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

NOTICE OF EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

**1. Sections Affected**

R2-20-203  
R2-20-210  
R2-20-215  
R2-20-216  
R2-20-217  
R2-20-219

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Repeal

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

Authorizing statutes: A.R.S. §§ 16-956(D), 16-956(B)(4), and 16-958(F). Rulemaking by the Citizens Clean Elections Commission (“Commission”) is not subject to Title 41, Chapter 6, Article 3, but instead is governed by A.R.S. § 16-956(D). A.R.S. § 16-956(D) provides that the “Commission rulemaking is exempt from Title 41, Chapter 6, Article 3, except that the Commission shall submit the rules for publication and the Secretary of State shall publish the rules in the *Arizona Administrative Register*. The Commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed.”

Implementing statutes: A.R.S. §§ 16-940 through 16-961

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

The proposed amendments to the Article 2 Enforcement Rules were adopted by the CCEC on March 19, 2002, with public comment ending on May 20, 2002. The final changes to the rules were adopted by the CCEC on May 21, 2002. The rule became retroactively effective on that date when it was precleared by the United States Department of Justice.

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

None

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

Name: Colleen Connor, Executive Director  
Citizens Clean Elections Commission

Address: Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, AZ 85007

Telephone: (602) 364-3477

Fax: (602) 364-3487

E-mail: www.ccec.state.az.us

**6. An explanation of the rules, including the agency’s reasons for initiating the rules:**

The Citizens Clean Elections Commission is complying with A.R.S. §§ 16-956(D), 16-956(B)(4), and 16-958(F). These statutes allow the Commission to enact rules to carry out the purposes and provisions of the Citizens Clean Elections Act (A.R.S. §§ 16-940 through 16-961). Many of the changes to Article 2 are essentially technical, grammatical, stylistic, and format changes recommended by staff, counsel, and members of the public, in order to make the rules more concise, easier to understand, and effective. Two subsections referencing conciliation in R2-20-216 were deleted because conciliation or settlement is an option throughout the enforcement process. These subsections thus appeared redundant and boxed the Commission into a timeline.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not 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 a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

Notices of Exempt Rulemaking

- 9. The summary of the economic, small business, and consumer impact:**  
Not applicable
- 10. A description of changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
Not applicable
- 11. A summary of the principal comments and the agency response to them:**  
There were no public comments received by the Commission regarding this change.
- 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 adopted as an emergency rule?**  
No
- 15. The full text of the rule follows:**

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

Section

- R2-20-203. Complaints  
R2-20-210. Written Questions Under Order  
R2-20-215. The Probable Cause to Believe Finding; Notification  
R2-20-216. Conciliation  
R2-20-217. Enforcement Proceedings  
R2-20-219. ~~Confidentiality~~ Repealed

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

**R2-20-203. Complaints**

- A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director ~~Administrative Counsel~~, Citizens Clean Elections Commission, 4001 North Third Street, Suite 200, Phoenix, AZ 85012. ~~The complainant should file 3 copies of the complaint.~~
- B. A complaint shall conform to the following:
1. Provide the full name and address of the complainant; and
  2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C. All statements made in a complaint are subject to the statutes governing perjury. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D. The complaint shall conform to the following provisions:
1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
  2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
  3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
  4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

**R2-20-210. Written Questions Under Order**

The Commission may ~~authorize its Chair to~~ issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

**R2-20-215. The Probable Cause to Believe Finding; Notification**

- A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director ~~Administrative Counsel~~ to so notify the respondent by an order, that states the nature of the violation, pursuant to

Notices of Exempt Rulemaking

A.R.S. § 16-957(A).

- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director Administrative Counsel to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's Administrative Counsel's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.
- C. If the Commission makes a finding that the respondent has violated a statute or rule over which the Commission has jurisdiction pursuant to subsection (A) of this rule, the respondent will be notified of his or her right to appeal the decision pursuant to the Arizona Administrative Procedures Act, A.R.S. § 41-1092.

**R2-20-216. Conciliation**

- A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director Administrative Counsel shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.
- B. A conciliation agreement pursuant to subsection (A) is not binding upon either party unless and until it is signed by the respondent and by the Executive Director Administrative Counsel upon approval by the affirmative vote of at least three members of the Commission.
- ~~C. If the Commission makes a probable cause finding pursuant to A.A.C. R2-20-215(A) within 45 days prior to any election, the conciliation attempt pursuant to subsection A of this section shall continue for at least 15 days from the date of the Commission's finding. In all other cases, conciliation attempts pursuant to subsection A of this section shall continue for at least 30 days, not to exceed 90 days, from the Commission's finding.~~
- ~~D. Nothing in these rules shall be construed to prevent the Commission from entering into a conciliation agreement with a respondent prior to a Commission finding of probable cause if a respondent indicates by letter to the Administrative Counsel a desire to enter into negotiations directed towards reaching such a conciliation agreement. However, the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe a respondent has violated a statute or rule over which the Commission has jurisdiction. Any conciliation agreement reached under this subsection is subject to the provisions of subsection B of this section and shall have the same force and effect as a conciliation agreement reached after the Commission finds probable cause to believe a respondent has violated a statute or rule over which the Commission has jurisdiction.~~
- ~~E.C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director Administrative Counsel shall send a copy of the signed agreement to both complainant and respondent.~~

**R2-20-217. Enforcement Proceedings**

- ~~A. If no conciliation agreement is finalized within the applicable minimum period specified by A.A.C. R2-20-216, Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director Administrative Counsel may recommend to the Commission that the Commission authorize the issuance of an order and assess civil penalties pursuant to A.R.S. § 16-957(B).~~
- ~~B. Upon recommendation of the Executive Director Administrative Counsel, the Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director Administrative Counsel to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).~~
- ~~C. Subsections A and B of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to A.A.C. R2-20-216 even after the Commission authorizes the Administrative Counsel to issue an order and assess civil penalties pursuant subsection B of this rule. Any conciliation agreement reached under this subsection is subject to the provisions of A.A.C. R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under A.A.C. R2-20-216(D).~~

**R2-20-219. Confidentiality Repealed**

- ~~A. Except as provided in A.A.C. R2-20-218 and in accordance with public records laws found in A.R.S. § 39-101, et seq., no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, shall be made public by the Commission. The Commission will advise the respondent in writing if any disclosure is made.~~
- ~~B. Except as provided in A.A.C. R2-20-218(B) and in accordance with public records laws, A.R.S. § 39-101, no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to A.A.C. R2-20-216, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission.~~
- ~~C. Nothing in these rules shall be construed to prevent the introduction of evidence in the courts of the United States that could properly be introduced pursuant to the Rules of Evidence or Rules of Civil Procedure.~~

**NOTICE OF EXEMPT RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**PREAMBLE**

- 1. Sections Affected**

R4-30-271	<b><u>Rulemaking Action</u></b>
R4-30-272	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. §§ 32-106(A) and 12-1001(D)  
Implementing statutes: A.R.S. §§ 12-1001(D), 32-112(D), 32-122.03, 32-122.04, and 32-122.05
- 3. The effective date of the rules:**

July 17, 2003—Immediately upon filing with the Office of the Secretary of State. Laws 2002, Ch. 297 (HB 2595) exempted the Board from the rulemaking requirements of Arizona Revised Statutes Title 41, Chapter 6, to develop rules under A.R.S. §§ 12-1001(D), 32-112(D), 32-122.03, 32-122.04, and 32-122.05. These statutes became effective June 30, 2003 and make it unlawful to practice these regulated occupations pursuant to amendments to A.R.S. § 32-145.
- 4. A list of all previous notices appearing in the Register addressing the exempt rules:**

Not applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Janis K. Humphrey
Address:	Board of Technical Registration 1110 W. Washington, Suite 240 Phoenix, AZ 85007
Telephone:	(602) 364-4948
Fax:	(602) 364-4931
E-mail:	btrjkh@yahoo.com
- 6. An explanation of the rules, including the agency's reason for initiating the rules, including the statutory citation to the exemption from regular rulemaking:**

Laws 2002, Ch. 297 (HB 2595), amended the Board of Technical Registration's statutes to provide for the certification and registration of clandestine drug laboratory remediation firms, supervisors, and on-site workers who perform remediation of clandestine drug laboratories that manufacture methamphetamine, LSD, or ecstasy. Laws 2002, Ch. 297, § 1 requires the Board to adopt, by rule, best standards and practices for performing clandestine drug laboratory remediations. The Board is adding R4-30-271(B)(1) through (7) and R4-30-272(B)(1) through (4) to provide training at the time of renewal. The statutes requiring registration and certification by the Board before conducting these occupations became effective June 30, 2003. Pursuant to Laws 2002, Ch. 297, § 15, the Board is exempt from the rulemaking requirements of Arizona Revised Statutes Title 41, Chapter 6, for one year after the effective date of the act to implement the act.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not 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:**

Not applicable
- 8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 9. The summary of the economic, small business, and consumer impact:**

Not applicable under an exemption pursuant to Laws 2002, Ch. 297, § 15.
- 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:**

Not applicable

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

Not applicable

**14. Was this rule previously made as an emergency rule?**

No

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**ARTICLE 2. REGISTRATION PROVISIONS**

Section

R4-30-271. On-site/~~Remediation~~ Supervisor Certification and Renewal

R4-30-272. On-site Worker Registration and Renewal

**ARTICLE 2. REGISTRATION PROVISIONS**

**R4-30-271. On-site/~~Remediation~~ Supervisor Certification and Renewal**

**A. No change**

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change

**B. Beginning September 30, 2003, an applicant for renewal of on-site supervisor certification shall submit an application package that contains:**

1. A completed renewal application form provided by the Board, signed and dated by the registrant that provides the information contained in subsections (A)(1), (2), (6), and (7);
2. A copy of the registrant's current 8-hour HAZWOPER refresher certificate;
3. A copy of the registrant's current AHERA refresher certificate;
4. For the first annual renewal, documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:
  - a. Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;
  - b. Chemical and physical hazards of a clandestine drug laboratory;
  - c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
  - d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
  - e. Potential sharps and biohazards at a clandestine drug laboratory;
  - f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
  - g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;

Notices of Exempt Rulemaking

5. For the first annual renewal, documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:
  - a. Hazardous and precautionary measures for initial entry into a clandestine drug laboratory site;
  - b. Assessment of residual contamination;
  - c. Preparation of the work plans for remediation of a clandestine drug laboratory;
  - d. Assessment of the structural stability for safe entry into a clandestine drug laboratory site;
  - e. Characterizing waste from the remediation of a clandestine drug laboratory; and
  - f. Preparing final reports on the remediation of the clandestine drug laboratory;
6. For the second and all subsequent annual renewals, documentation of successful completion of a 2-hour refresher training course approved by the Board that encompasses the following:
  - a. Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;
  - b. Hazardous and precautionary measures for initial entry into a clandestine drug laboratory site;
  - c. Preparation of the work plan for remediation of a clandestine drug laboratory;
  - d. Assessment of the structural stability for safe entry into a clandestine drug laboratory site;
  - e. Characterizing waste from the remediation of a clandestine drug laboratory; and
  - f. Preparing the final report on the remediation of a clandestine drug laboratory;
7. The applicable fee.

**C.B.** The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and the applicant is eligible in all other aspects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.

**R4-30-272. On-site Worker Registration and Renewal**

- A.** No change
1. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  7. No change
  8. No change
  9. No change
  10. No change
- B.** Effective September 30, 2003, an applicant for renewal of on-site worker registration shall submit an application package that contains:
1. A completed renewal application form provided by the Board, signed and dated by the registrant that provides the information contained in subsections (A)(1), (2), (6) and (7);
  2. A copy of the registrant's current 8-hour HAZWOPER refresher certificate;
  3. For the first annual renewal, documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:
    - a. Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;
    - b. Chemical and physical hazards of a clandestine drug laboratory;
    - c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
    - d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
    - e. Potential sharps and biohazards at a clandestine drug laboratory;
    - f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
    - g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;
  4. The applicable fee.

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~~B.C.~~ The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered, the Board staff or committee shall recommend that the Board register the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for registration.

**NOTICE OF PROPOSED EXEMPT RULEMAKING**

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 11. BOARD OF FINGERPRINTING**

**PREAMBLE**

**1. Sections Affected**

R13-11-101  
R13-11-102  
R13-11-103  
R13-11-104  
R13-11-105  
R13-11-105  
R13-11-106  
R13-11-106  
R13-11-107  
R13-11-107  
R13-11-108  
R13-11-109  
R13-11-109  
R13-11-110  
R13-11-110  
R13-11-111

**Rulemaking Action**

Amend  
Amend  
Amend  
New Section  
Repeal  
New Section  
Re-number  
New Section  
Re-number  
New Section  
New Section  
Re-number  
Amend  
Re-number  
Amend  
Re-number

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

Authorizing statute: A.R.S. § 41-619.53(A)(2)

Implementing statutes: A.R.S. §§ 41-619.51 through 41-619.55 (as amended by Laws 2003, Ch. 214 §§ 16-18 [first regular session])

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

The rules become effective immediately upon filing the Notice of Final Exempt Rulemaking with the Office of the Secretary of State.

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

Notice of Proposed Exempt Rulemaking: 9 A.A.R. 1966, June 20, 2003

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

Name: Dennis Seavers, Executive Director  
Address: Arizona Board of Fingerprinting  
Mail Code 185, Post Office Box 6129  
Phoenix, AZ 85005-6129  
Telephone: (602) 322-8593  
Fax: (602) 322-8594

**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:**

The proposed rules reflect anticipated changes to the Board's rules that appeared in the June 20, 2003 issue of the *Arizona Administrative Register*. These anticipated changes will have gone into effect on August 1, 2003, but the Notice of Final Exempt Rulemaking will not have appeared in the *Arizona Administrative Register* by the time this Notice of Proposed Exempt Rulemaking is published.

Notices of Exempt Rulemaking

The proposed rules make significant changes to the current rules in order to reflect changes to the Board's business process and to the Board's statutes (see Laws 2003, Ch. 214 §§ 16-18 [first regular session]). The proposed rules also include additional definitions and grammatical changes.

The rules explain:

1. How an appellant would request a good cause exception;
2. The requirements for a good cause exception application;
3. How the Board will conduct expedited reviews, and what criteria the Board will use to determine whether an appellant should receive a good cause exception under an expedited review;
4. How the Board, its hearing officer, or an appellant may request a hearing to be vacated or rescheduled;
5. How an appellant may request telephonic testimony;
6. How good cause exception hearings will be conducted, and the criteria the Board or its hearing officer will use to determine whether a good cause exception should be granted at a hearing; and
7. The process of notifying and informing the Department of Public Safety of the Board or its hearing officer's determinations.

A.R.S. § 41-619.53(A)(2) exempts the proposed rules from A.R.S. Title 41, Chapter 6. The Board of Fingerprinting will allow time for reasonable public notice and comments on the rules and file the final rule with the Office of the Secretary of State.

**7. A reference to any study relevant to the rule that an agency reviewed and either proposes to rely on in its evaluation 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 a 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 (see A.R.S. § 41-619.53(A)(2))

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

The Board of Fingerprinting will wait 30 days to receive public comment before filing the Notice of Final Exempt Rulemaking with the Office of the Secretary of State.

**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?**

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. ~~Good Cause Exception Hearings~~ Request for Good Cause Exception

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

R13-11-105. ~~Requests for Good Cause Exception — No Disposition~~ Expedited Review

Notices of Exempt Rulemaking

- R13-11-106. Request to Vacate or Reschedule Hearing  
R13-11-107. Telephonic Testimony  
R13-11-108. Hearings  
~~R13-11-104.~~ R13-11-109. Notification of Decision for Good Cause Exception Hearing  
~~R13-11-106.~~ R13-11-110. Confidentiality  
~~R13-11-107.~~ R13-11-111. Fees

**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 ~~R13-11-107~~ 111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card pursuant to 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 A.R.S. § 41-1758.03; and who submits a request pursuant to R13-11-103(A).
- ~~1.~~ 2. No change
- ~~2.~~ 3. No change
- ~~3.~~ 4. No change
- ~~4.~~ 5. No change
6. “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. “Good cause exception” means the issuance of a fingerprint clearance card to an appellant pursuant to A.R.S. § 41-619.55.
8. “Hearing officer” means an administrative law judge or other person hired 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 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. ~~Good Cause Exception Hearings~~ Request for Good Cause Exception**

- A. A person who meets the requirements of A.R.S. § 41-1758.03 and wishes to apply for a good cause exception shall submit a request to the Board within 30 calendar days of the date on the Department’s notice.
- B. The Board shall send an application package 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 A.R.S. § 41-619.55, or
    - b. The Department’s notice or any of its pages.
- C. The Board shall reject an applicant’s request for a good cause exception and send a written notice of rejection if one of the following applies:
  1. The applicant submits a request in excess of 30 days of the date on the Department’s notice, except as provided for in R13-11-103(B)(2).
  2. R13-11-103(B) notwithstanding, the applicant is not eligible to request a good cause exception under A.R.S. § 41-1758.03.

**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:
  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

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- 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 that occurred five years or less prior to the date on the Department's notice, whether or not the arrests were listed on the Department's notice, the police report for each arrest and documents from the appropriate court showing the disposition of the charge.
  5. 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 all arrests, whether or not the arrests were listed on the Department's notice.
- B.** The Board shall accept any other documents an appellant submits to demonstrate good cause for an exception.

**R13-11-105. Requests for Good Cause Exception—No Disposition Expedited Review**

An individual who is denied a fingerprint clearance card pursuant to A.R.S. § 41-1758.03(O) may request a good cause exception hearing. The hearing will be conducted as prescribed in R13-11-102 except that the required documentation shall include information relating to the disposition of the offense:

- A.** Upon receiving a completed 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 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 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 determine 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.

**R13-11-106. Request to Vacate or Reschedule Hearing**

- A.** An appellant who wishes to request that the Board or its hearing officer vacate or reschedule a hearing shall submit a written request to the Board.
- B.** The Board shall give an appellant written notification if a hearing has been vacated or rescheduled.
- C.** The Board or its hearing officer may vacate a hearing, if:
1. The Department determines that it will issue the fingerprint clearance card that the appellant has requested;
  2. The appellant withdraws the appeal by submitting a written notice to the Board; or
  3. Facts demonstrate to the Board or its hearing officer that it is appropriate to vacate the hearing if the action will further administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.
- D.** The Board or its hearing officer may reschedule a hearing, if:
1. The appellant shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.
  2. The appellant shows that attending the calendared hearing would be impossible, using reasonable diligence.
  3. Rescheduling the calendared hearing is necessary to give priority to a hearing for an appellant whose fingerprint clearance card was suspended over a hearing for an appellant whose application for a fingerprint clearance card was denied.
  4. Facts demonstrate to the Board or its hearing officer that it is appropriate to reschedule the hearing for the purpose of administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.

**R13-11-107. Telephonic Testimony**

- A.** An appellant who wishes to submit or have a witness submit telephonic testimony at the hearing shall submit a written request to the Board.
- B.** The Board or its hearing officer may allow the appellant or the appellant's witness to submit telephonic testimony at the hearing, if:

Notices of Exempt Rulemaking

1. Personal attendance by the appellant or the appellant's witness at the hearing will present an undue hardship for the appellant or the appellant's witness;
2. Telephonic presence will not cause undue prejudice to any party; and
3. The appellant or appellant's witness assumes the cost of testifying telephonically.

**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. An 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; and
  - d. Personal references attesting to the appellant's rehabilitation.

**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 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.

**~~R13-11-104. R13-11-109. Notification of Decision for Good Cause Exception Hearing~~**

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

**~~R13-11-106. R13-11-110. Confidentiality~~**

All information relating to an ~~individual's~~ appellant's criminal history is confidential and shall not be disseminated or disclosed except as required by law.

**~~R13-11-107. R13-11-111. Fees~~**

- A.** No change
- B.** No change
- C.** No change