

# 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 PROPOSED EXEMPT RULEMAKING

### TITLE 13. PUBLIC SAFETY

### CHAPTER 11. BOARD OF FINGERPRINTING

[R06-385]

#### PREAMBLE

**1. Sections Affected**

R13-11-109  
R13-11-110  
R13-11-111  
R13-11-112  
R13-11-113

**Rulemaking Action**

New Section  
New Section  
Renumber  
Renumber  
Renumber

**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 1062(B)

Implementing statute: A.R.S. § 41-619.55

**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 rule:**

Not applicable

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

Name: Dennis Seavers, Executive Director

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Mail Code 185  
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Phoenix, AZ 85005-6129

E-mail: dennis.seavers@azbof.gov

Telephone: (602) 322-8593

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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:**

The proposed rules make two changes to the current rules.

First, the Board is adopting a rule prohibiting *ex parte* communication relevant to the merits of a good cause exception proceeding. The rule also prescribes a process for placing any prohibited, *ex parte* communications on the record of the proceeding.

Second, the Board is adopting a rule on rehearing or reviewing a decision or order that results from an administrative hearing. This rule, which is required by A.R.S. §§ 41-1062(B), describes the process for an appellant to submit a request for rehearing or review and obliges the Board to grant a request for one of the following reasons materially affecting the rights of the applicant:

1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law;

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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;
4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.

The rule identifies the options available to the Board for responding to a request for review or rehearing. The rule also explains the parameters for conducting a rehearing or review and requires the Board to specify the basis for its decision.

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 will 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 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:**

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? 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

R13-11-109. Ex Parte Communications

R13-11-110. Rehearing or Review of Decision

~~R13-11-109~~R13-11-111. Notification of Decision for Good Cause Exception

~~R13-11-110~~R13-11-112. Confidentiality

~~R13-11-111~~R13-11-113. Fees

ARTICLE 1. BOARD OF FINGERPRINTING

**R13-11-109. Ex Parte Communications**

**A. In any good cause exception case, except to the extent required for disposition of *ex parte* matters as authorized by law or these rules of procedure:**

- 1. No interested person outside the Board may make or knowingly cause to be made to any Board members, hearing**

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officer, or other employee or consultant who may reasonably be expected to be involved in the decisional process of the proceeding, an *ex parte* communication relevant to the merits of the proceeding;

2. No Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the good cause exception determination, may make or knowingly cause to be made to any interested person outside the Board an *ex parte* communication relevant to the merits of the determination.

**B.** A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the good cause exception determination, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, must place on the record of the proceeding and serve on all parties to the proceeding:

1. All prohibited written communications;
2. Memoranda stating the substance of all prohibited oral communications; and
3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in (1) and (2) of this subsection.

**C.** Upon receipt of a communication made or knowingly caused to be made by a party in violation of this section, the Board or its hearing officer, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

**D.** The provisions of this section apply beginning when the request for a good cause exception is filed in accordance with R13-11-103.

**E.** For the purposes of this section:

1. “Person outside the Board” means any person other than a Board member, employee or consultant of the Board, or attorney representing the Board in its adjudicatory role.
2. “*Ex parte* communication” means an oral or written communication not on the administrative record and not the subject of reasonable prior notice to all parties.

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

**A.** An appellant may seek a review or rehearing of a Board 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 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.** The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the appellant’s rights were materially affected.

**C.** The Board 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.** A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

**~~R13-11-109~~R13-11-111. Notification of Decision for Good Cause Exception**

- A. No change
- B. No change

**~~R13-11-110~~R13-11-112. Confidentiality**

No change

**~~R13-11-111~~R13-11-113. Fees**

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