

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

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2201.)

[R12-162]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R13-11-101	Amend
R13-11-102	Amend
R13-11-103	Repeal
R13-11-104	Amend
R13-11-105	Amend
R13-11-106	Amend
R13-11-107	Amend
R13-11-108	Amend
R13-11-109	Amend
R13-11-110	Amend
R13-11-111	Repeal
R13-11-112	Repeal
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the statutes the rules are implementing (specific), and the statute or session law authorizing the exemption:**

Authorizing statute: A.R.S. § 41-619.53(A)(2)
Implementing statutes: A.R.S. §§ 41-619.55 and 41-619.57
Statute or session law authorizing the exemption: A.R.S. § 41-619.53(A)(2) and Laws 2012, Ch. 188, § 9
- 3. The effective date of the rule and the agency's reason it selected the effective date:**

August 8, 2012, which is the date the rules were filed in the Secretary of State's Office
- 4. A list of all notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**

None. This rulemaking is statutorily exempt from review under A.R.S. § 41-619.53(A)(2) and Laws 2012, Ch. 188, § 9.
- 5. The agency's contact person who can answer questions about the rulemaking:**

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6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

Laws 2012, Ch. 188, requires the Board to consider applications for central-registry exceptions. The bill creates a new statute, A.R.S. § 41-619.57, to govern the process for considering central-registry-exception applications. The Board needs to establish rules for the application process.

At the same that the Board is establishing rules for central-registry exceptions, the Board is also cleaning up unnecessary rule provisions, particularly to reflect recent changes in statutes and business-process changes that were necessary because of budget cuts.

This rulemaking has various provisions to implement the new law.

- Clarifies that Title 13, Chapter 11, Article 1 of the *Arizona Administrative Code* applies to central-registry exceptions and not just good-cause exceptions;
- Amends existing definitions to give them broader scope and clean up obsolete language, and eliminates obsolete definitions;
- Creates new definitions relating to central-registry exceptions;
- Establishes application requirements for central-registry exceptions;
- Applies existing procedures to central-registry exceptions;
- Repeals unnecessary rules or rule provisions.

A.R.S. § 41-619.53(A)(2) exempts the proposed rules from A.R.S. Title 41, Chapter 6. However, the Board requested comments on proposed rules from stakeholders.

7. A reference to any study relevant to the rule that an agency reviewed and either relied on 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 rulemaking is necessary to promote a statewide interest if the rulemaking 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, if applicable:

Not applicable

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and final rulemaking package (if applicable):

Not applicable

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

Although the Board did not publish proposed rules in the *Register*, it solicited input from stakeholders on rules proposed in its July 6, 2012 meeting.

The Arizona Department of Economic Security (DES) submitted comments that were technical in nature, all of which the Board accepted.

DES also proposed a substantive change to the proposed R13-11-103(B)(5), which listed an application requirement for central-registry exceptions. DES believed that the Board's rule should include more encompassing language and should not focus solely on Child Protective Services case plans. DES also noted that not all applicants will have had case plans. As reflected in its August 3, 2012 meeting minutes (available at www.azbof.gov), the Board agreed to modify its proposed rule so that only applicants who had case plans would be required to submit those plans.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

There were no other matters applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material and its location in the rule:

None

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14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable

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~~ Repealed
- R13-11-104. ~~Good Cause Exception~~ Application Requirements
- R13-11-105. Expedited Review
- R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing
- R13-11-107. Telephonic Testimony
- R13-11-108. Hearings
- R13-11-109. Ex Parte Communications
- R13-11-110. Rehearing or Review of Decision
- R13-11-111. ~~Notification of Decision for Good Cause Exception~~ Repealed
- R13-11-112. Confidentiality Repealed

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 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 under A.R.S. § 41-1758.03; and who submits a request according to R13-11-103(A).~~
- ~~2.1.~~ "Applicant" means a person who applies for a fingerprint clearance card under A.R.S. § 41-1758.03 good cause exception under A.R.S. § 41-619.55 or a central registry exception under A.R.S. § 41-619.57.
- ~~3.~~ "Application" means all of the documents required by A.A.C. R13-11-104(A).
- ~~4.2.~~ "Board" means the Board of Fingerprinting.
- ~~3.~~ "Central registry exception" means notification to the Department of Economic Security or the Department of Health Services, as appropriate, pursuant to A.R.S. § 41-619.57 that the person is not disqualified because of a central registry check conducted pursuant to A.R.S. § 8-804.
- ~~4.~~ "Central registry exception application" means all the documents required by R13-11-104(B).
- ~~5.~~ "CPS" means Child Protective Services.
- ~~6.~~ "DES" means the Department of Economic Security.
- ~~7.~~ "DES notice" means the notice of disqualification because of a central registry background check that the Department of Economic Security sends to an applicant under A.R.S. § 8-804(H).
- ~~5.8.~~ "Department DPS" means the Department of Public Safety.
- ~~6.9.~~ "Department's DPS notice" means the notice of denial or suspension of a fingerprint clearance card that the Department of Public Safety sends to an applicant under A.R.S. § 41-1758.04.
- ~~7.10.~~ "Expedited review" means an examination, in accordance with Board rules, of the documents an appellant applicant submits by the Board or its hearing officer without the appellant applicant being present.
- ~~8.11.~~ "Good cause exception" means the issuance of a fingerprint clearance card to an appellant applicant under A.R.S. § 41-619.55.
- ~~12.~~ "Good cause exception application" means all of the documents required by R13-11-104(A).
- ~~9.13.~~ "Hearing officer" means an administrative law judge or other person appointed by the Board to determine good cause exceptions or central registry exceptions.

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10. "Request" means a person's written indication to the Board that he or she wishes to appeal for a good cause exception 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 Repealed

- 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 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 under A.R.S. § 41-619.55, or
 - b. The Department's notice or any of its pages.
- C.** Within five business days, the Board shall send a notice to an applicant who submits an incomplete request. The notice shall indicate that the request is incomplete and what elements of the request are missing.
- D.** The Board shall reject an applicant's request for a good cause exception and send a written notice of rejection within five business days 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 Requirements

- A.** Good cause exception application. ~~A~~ A good cause exception application shall consist of both the criminal history information provided by the Department DPS and the following materials submitted by an ~~appellant~~ applicant 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~~ applicant for at least one year, and
 - b. At least one letter of reference shall be from the ~~appellant's~~ applicant's current or former employer or from an individual who has known the ~~appellant~~ applicant for at least three years.
 3. If the ~~Department's~~ DPS notice indicates that ~~the Department~~ DPS 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~~ applicant either do not exist or have been purged.
 4. For any charges that occurred five years or less prior to the date on the ~~Department's~~ DPS notice, regardless of whether the charges were listed on the ~~Department's~~ DPS notice, the police report for each 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~~ DPS notice, documents from the appropriate court showing that the ~~appellant~~ applicant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the ~~appellant~~ applicant either do not exist or have been purged. If the ~~appellant~~ applicant has not met all judicially imposed obligations or sentencing conditions, the ~~appellant~~ applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the ~~appellant's~~ applicant's efforts toward meeting the obligations.
 6. A statement written by the ~~appellant~~ applicant that explains each charge, regardless of whether the charges were listed on the ~~Department's~~ DPS notice.
- B.** Central registry exception application. A central registry exception application shall consist of the criminal history information provided by DPS, the redacted CPS report and investigative information provided by DES, and the following materials submitted by an applicant to the Board:
1. The central registry 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 applicant for at least one year; and
 - b. At least one letter of reference shall be from the applicant's current or former employer or from an individual who has known the applicant for at least three years.
 3. If the applicant has had any criminal charges:

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- a. Documents from the appropriate court showing the disposition of the criminal charges or showing that records pertaining to the applicant either do not exist or have been purged.
 - b. For any charges that occurred five years or less prior to the date on the DES notice, the police report for each charge and documents from the appropriate court showing the disposition of each charge.
 - c. For every criminal conviction, documents from the appropriate court showing that the applicant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the applicant either do not exist or have been purged. If the applicant has not met all judicially imposed obligations or sentencing conditions, the applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the applicant's efforts toward meeting the obligations.
 - d. A statement written by the applicant that explains each criminal charge.
 4. A statement written by the applicant that explains each incident that led to a substantiated allegation of child abuse or neglect.
 5. If CPS assigned a case plan to the applicant, the current CPS case plan or documentation from CPS showing that the case plan is unavailable.
- ~~B.C.~~ The Board or its hearing officer may accept any other documents an ~~appellant~~ applicant submits ~~to demonstrate good cause for an exception, consistent with as allowed by A.R.S. § 41-1062.~~

R13-11-105. Expedited Review

- A. Within 20 days of receiving an application, the Board ~~or its hearing officer~~ shall conduct an expedited review. When determining whether the ~~appellant~~ applicant should receive a good cause exception or central registry exception under an expedited review, the Board ~~or its hearing officer~~ shall consider the following:
1. The criteria listed in ~~R13-11-108(A)~~ A.R.S. § 41-619.55(E) for good cause exception applications or A.R.S. § 41-619.57(E) for central registry exception applications; and
 2. Whether the documentation submitted in support of a good cause exception application or central registry exception application is sufficient to allow the Board ~~or its hearing officer~~ to grant a good cause exception or central registry exception, or whether the Board ~~or its hearing officer~~ requires further documentation or oral testimony.
- B. If the Board ~~or its hearing officer~~ determines that the ~~appellant~~ applicant is eligible for a good cause exception or central registry exception under an expedited review, the Board ~~or its hearing officer~~ shall grant the ~~appellant~~ applicant a good cause exception.
- C. If the Board ~~or its hearing officer~~ determines that an ~~appellant~~ applicant is not eligible for a good cause exception or central registry exception under an expedited review, the Board ~~or its hearing officer~~ shall direct the Board's executive director to schedule a hearing. The Board's executive director shall give the ~~appellant~~ applicant reasonable notice of the hearing in accordance with A.R.S. § 41-1061. The hearing shall take place within 45 days after the expedited review.

R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing

- A. An ~~appellant~~ applicant 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 or its hearing officer shall give an ~~appellant~~ applicant written notification if a hearing has been vacated or rescheduled.
- C. Vacating a hearing. 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~~ applicant no longer requires a good cause exception or central registry exception;
 2. The ~~appellant~~ applicant withdraws the ~~appeal~~ application 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. Rescheduling a hearing. The Board or its hearing officer may reschedule a hearing if:
1. The ~~appellant~~ applicant shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.
 2. The ~~appellant~~ applicant 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.~~
 - 4.3. 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.
- E. Continuing a hearing. When ruling on a motion to continue a hearing, the Board or its hearing officer shall consider such factors as:
1. The reasons for continuing the hearing; and
 2. Whether the continuance will cause undue prejudice to any party.

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F. Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

R13-11-107. Telephonic Testimony

- A. An appellant applicant 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 applicant or the appellant's applicant's witness to submit telephonic testimony at the hearing if:
1. Personal attendance by the appellant applicant or the appellant's applicant's witness at the hearing will present an undue hardship for the appellant applicant or the appellant's applicant's witness;
 2. Telephonic presence will not cause undue prejudice to any party; and
 3. The appellant applicant or appellant's the applicant'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. 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.~~

~~B.A.~~ Absent good cause, if the appellant or his or her representative fail applicant fails to appear at a hearing, the Board ~~or its hearing officer~~ may deny the applicant a good cause exception application or central registry exception application for failure to appear at the hearing. An appellant applicant demonstrates good cause by showing that the appellant applicant 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 applicant'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.B.~~ The Board ~~or its hearing officer~~ shall grant or deny a good cause exception or central registry exception within 80 days of the hearing.

R13-11-109. Ex Parte Communications

- A. In any good cause exception or central registry 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 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 proceeding~~, 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 proceeding~~, 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 ~~(+) subsections (B)(1) and (2) of this subsection~~ Section.
- 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.

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- D. The provisions of this Section apply beginning when the request application for a good cause exception or central registry 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 applicant 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 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 applicant:
 - 1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
 - 2. The appellant applicant 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 applicant's rights were materially affected.
- 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. 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.

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

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

R13-11-112. Confidentiality Repealed

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