

Board of Fingerprinting

TITLE 13. PUBLIC SAFETY

CHAPTER 11. BOARD OF FINGERPRINTING

(Authority: A.R.S. §§ 41-619.53(A)(2) and 41-619.55(A)(1))

Title 13, Chapter 11, consisting of Sections R13-11-101 through R13-11-105, adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3).

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ARTICLE 1. BOARD OF FINGERPRINTING

R13-11-101. Expired

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Amended by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 465, effective November 28, 2014 (Supp. 15-1).

R13-11-102. Definitions

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

1. "Applicant" means a person who applies for a good cause exception under A.R.S. § 41-619.55 or a central registry exception under A.R.S. § 41-619.57.
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 A.A.C. 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).
8. "DPS" means the Department of Public Safety.
9. "DPS notice" means the notice of denial or suspension of a fingerprint clearance card that the Department of Public

Safety sends to a fingerprint clearance card applicant under A.R.S. § 41-1758.04.

10. "Expedited review" means an examination by the Board, without the applicant being present and in accordance with R13-11-105, of the documents an applicant submits.
11. "Good cause exception" means the issuance of a fingerprint clearance card to an applicant under A.R.S. § 41-619.55.
12. "Good cause exception application" means all of the documents required by A.A.C. R13-11-104(A).
13. "Hearing officer" means an administrative law judge or other person appointed by the Board to determine good cause exceptions or central registry exceptions.

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-102 renumbered to R13-11-103; new Section R13-11-102 made by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3).

R13-11-103. Repealed

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-103 renumbered to R13-11-104; new Section R13-11-103 renumbered from R13-11-102 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Repealed by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

R13-11-104. Application Requirements

- A. Good cause exception application. A good cause exception application shall consist of both the criminal history information provided by DPS and the following materials submitted by an applicant to the Board:
 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 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.

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3. If the DPS notice indicates that 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 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 DPS notice, regardless of whether the charges were listed on the 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 DPS notice, 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.
 6. A statement written by the applicant that explains each charge, regardless of whether the charges were listed on the 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:
 - 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.
- C.** The Board or its hearing officer may accept any other documents an applicant submits, as allowed by A.R.S. § 41-1062.
- Historical Note**
- New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-104 renumbered to R13-11-105; new Section R13-11-104 renumbered from R13-11-103 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-104 renumbered to R13-11-109; new Section R13-11-104 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).
- R13-11-105. Expedited Review**
- A.** Within 20 days of receiving an application, the Board shall conduct an expedited review. When determining whether the applicant should receive a good cause exception or central registry exception under an expedited review, the Board shall consider the following:
1. The criteria listed in 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 to grant a good cause exception or central registry exception, or whether the Board requires further documentation or oral testimony.
- B.** If the Board determines that the applicant is eligible for a good cause exception or central registry exception under an expedited review, the Board shall grant the applicant a good cause exception.
- C.** If the Board determines that an applicant is not eligible for a good cause exception or central registry exception under an expedited review, the Board shall direct the Board's executive director to schedule a hearing. The Board's executive director shall give the 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.
- Historical Note**
- New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-105 renumbered to R13-11-106; new Section R13-11-105 renumbered from R13-11-104 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Section repealed; new Section made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).
- R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing**
- A.** An 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 applicant written notification if a hearing has been vacated or rescheduled.

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- C. Vacating a hearing. The Board or its hearing officer may vacate a hearing if:
1. The applicant no longer requires a good cause exception or central registry exception;
 2. The applicant withdraws the 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 applicant shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.
 2. The applicant shows that attending the calendared hearing would be impossible, using reasonable diligence.
 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.
- F. Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

Historical Note

New Section R13-11-106 renumbered from R13-11-105 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-106 renumbered to R13-11-110; new Section R13-11-106 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

R13-11-107. Telephonic Testimony

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

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-107 renumbered to R13-11-111; new Section R13-11-107 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

R13-11-108. Hearings

- A. Absent good cause, if the applicant fails to appear at a hearing, the Board may deny the good cause exception application or central registry exception application for failure to appear at the hearing. An applicant demonstrates good cause by showing that the 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 applicant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board shall determine whether good cause exists.
- B. The Board shall grant or deny a good cause exception or central registry exception within 80 days of the hearing.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

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:
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 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 proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by R13-11-109(A), 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 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 application for a good cause exception or central registry exception is filed.
- 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.

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Historical Note

Section renumbered from R13-11-104 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Former R13-11-109 renumbered to R13-11-111; new R13-11-109 made by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3).

R13-11-110. Rehearing or Review of Decision

- A.** An applicant 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 shall grant a request for review or rehearing for any of the following reasons materially affecting the rights of the applicant:
1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
 2. The 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 applicant'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.

Historical Note

Section renumbered from R13-11-106 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September

26, 2003 (Supp. 03-3). Former R13-11-110 renumbered to R13-11-112; new R13-11-110 made by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

R13-11-111. Repealed**Historical Note**

Section renumbered from R13-11-107 by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Former R13-11-111 renumbered to R13-11-113; new R13-11-111 renumbered from R13-11-109 by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Repealed by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

R13-11-112. Repealed**Historical Note**

Section R13-11-112 renumbered from R13-11-110 by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Repealed by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

R13-11-113. Fees

- A.** DPS shall collect proper fees for good cause exceptions from all applicants and shall transmit the fees to the state Treasurer. A fee of \$7.00 is established for good cause exceptions and central registry exceptions.
- B.** Fees shall be paid in addition to and in the same payment as fees paid to DPS for a fingerprint clearance card application.

Historical Note

Section R13-11-113 renumbered from R13-11-111 by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3).