

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 FINAL EXEMPT RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 11. BOARD OF FINGERPRINTING

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R13-11-101	Amend
R13-11-102	Amend
R13-11-103	Amend
R13-11-104	New Section
R13-11-105	Repeal
R13-11-105	New Section
R13-11-106	Renumber
R13-11-106	New Section
R13-11-107	Renumber
R13-11-107	New Section
R13-11-108	New Section
R13-11-109	Renumber
R13-11-109	Amend
R13-11-110	Renumber
R13-11-110	Amend
R13-11-111	Renumber

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:

September 26, 2003

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

Notice of Proposed Exempt Rulemaking: 9 A.A.R. 3517, August 8, 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 rules, including the agency's reasons for initiating the rules, including the statutory citation to the exemption from regular rulemaking procedures:

The rules reflect changes to the Board's rules that appeared in the Notice of Final Exempt Rulemaking at 9 A.A.R. 3744, August 22, 2003.

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.

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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, rescheduled, or continued, and how the Board, or its hearing officer, may recess and reconvene a hearing
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
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.

7. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, 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 (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):

The following are changes made to the rules in this Notice of Final Exempt Rulemaking from the Notice of Proposed Exempt Rulemaking at 9 A.A.R. 3517, August 8, 2003.

1. R13-11-103(B) now requires the Board to send an application package, if appropriate, to an appellant within five business days
2. R13-11-103(C) now requires the Board to send the notice of an incomplete request within five business days and explain what elements of the request are missing
3. R13-11-104(C) explains what makes an application complete or incomplete
4. R13-11-105(A) now requires the Board to conduct an expedited review within 30 business days of the receipt of a complete application
5. R13-11-106(E) allows appellants, or their representatives, to request a continuance and lists criteria for the Board or its hearing officer to consider when ruling on a continuance request
6. R13-11-106(F) allows the Board or its hearing officer to recess a hearing and reconvene at a later date by a verbal ruling
7. R13-11-108(A)(6)(e) requires the Board or its hearing officer to consider witness testimony that an appellant submits when considering whether to grant a good cause exception at a hearing
8. All other changes relate to typographical errors or clarified phrasing.

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

The comments related to:

1. Time-frames for the Board to send application packages, notices of incomplete requests, or notices of rejection and to conduct expedited reviews. The Board adopted the comments, except that it only applied the time-frame for conducting an expedited review to complete applications
2. A requirement that the Board send a written notice to an appellant to explain whether the application is complete and, if the application is incomplete, what elements are missing. The Board did not adopt the comment
3. A provision for requesting continuances at hearings. The Board adopted the comment

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4. An explicit allowance for appellants to submit witness testimony, with no suggestion that the Board or its hearing officer could refuse to hear witness testimony. The Board adopted the comment
5. Typographical errors. The Board adopted the comment

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. Were these rules previously made as emergency rules?

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
- R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a 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~~ R13-11-111 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).
- ~~2.~~ No change
- ~~3.~~ No change
- ~~4.~~ No change
- ~~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.

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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 hearing shall submit a completed application to the Board of Fingerprinting within 30 calendar days of the date notice by the Department of Public Safety of eligibility to apply for a good cause exception hearing.~~
- ~~B. The written request for a good cause exception hearing shall:~~
- ~~1. Be on forms prescribed by the Board of Fingerprinting; and~~
 - ~~2. Include a copy of the denial letter received from the Department of Public Safety.~~
- ~~C. Within 15 days of receipt of a written request from an applicant for a good cause exception hearing, the Board of Fingerprinting shall notify the applicant in writing of the applicant's eligibility for a hearing.~~
- ~~D. The applicant shall submit, when applicable, the following materials to the Board of Fingerprinting for a good cause exception hearing:~~
- ~~1. The good cause exception submittal form.~~
 - ~~2. The extent of the person's criminal record.~~
 - ~~3. The length of time that has elapsed since the offense was committed.~~
 - ~~4. The nature of the offense.~~
 - ~~5. The degree to which the person participated in the offense.~~
 - ~~6. Any applicable mitigating circumstances.~~
 - ~~7. The extent of the person's rehabilitation, including:~~
 - ~~a. Completion of probation, parole, or community supervision;~~
 - ~~b. Whether the person paid restitution or other compensation for the offense;~~
 - ~~c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment plan or counseling;~~
 - ~~d. Personal references attesting to the person's rehabilitation.~~
- ~~E. The Board of Fingerprinting shall schedule and issue a written notice for the good cause exception hearing after receipt from the applicant of the completed good cause exception hearing request submittal form and all applicable documents.~~
- ~~F. The Board of Fingerprinting shall send to the individual in writing the date, time, place, and telephone number of the good cause exception hearing.~~
- 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 pursuant to 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

- 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
 - 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.

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4. For any arrests that occurred five years or less prior to the date on the Department's notice, regardless of whether 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. For every criminal conviction, regardless of whether the offenses were listed on the Department's notice, documents from the appropriate court showing that the appellant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the appellant either do not exist or have been purged. If the appellant has not met all judicially imposed obligations or sentencing conditions, the appellant shall provide a written statement indicating or documents from the appropriate court showing the status of the appellant's efforts toward meeting the obligations.
6. A statement written by the appellant that explains each arrest, regardless of whether 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.

C. A good cause exception application shall be complete if it meets all the requirements of R13-11-104(A). A good cause exception application shall be incomplete if it does not meet all the requirements of R13-11-104(A).

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

A. The Board of Fingerprinting shall notify the applicant in writing of the Board's decision.

B. When a good cause exception is granted, the Board of Fingerprinting shall request, in writing, the Department of Public Safety to issue a fingerprint clearance card.

A. Within 30 business days of receiving a complete 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, Reschedule, or Continue Hearing; Reconvening a 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. 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;
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. Rescheduling a hearing. 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.

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.

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.

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B. The Board or its hearing officer may allow the appellant or the appellant's witness to submit telephonic testimony at the hearing, if:

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. Any applicable mitigating circumstances;
5. The degree to which the appellant participated in the offense; and
6. The extent of the appellant's rehabilitation, including:
 - a. Completion of or progress toward completing probation, parole, or community supervision;
 - b. Completion of payment or progress toward paying restitution or other compensation for the offense;
 - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;
 - d. Personal references attesting to the appellant's rehabilitation; and
 - e. Witness testimony that the appellant submits.

B. Absent good cause, if the appellant or his or her representative fail to appear at a hearing, the Board or its hearing officer shall proceed with the hearing and 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-appellant in writing of the Board's decision and, if the good cause exception is granted at a hearing, transmit findings of fact and conclusions of law.~~
- B.** ~~When the Board or its hearing officer grant 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 applicant or 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