

**2014 FIVE-YEAR-REVIEW REPORT**  
**TITLE 13. PUBLIC SAFETY**  
**CHAPTER 11. BOARD OF FINGERPRINTING**  
**ARTICLE 1. BOARD OF FINGERPRINTING**

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### **Five-Year-Review Summary**

The Arizona Board of Fingerprinting was established by Laws 1998, Ch. 270, § 27, and is currently statutorily authorized by A.R.S. § 41-619.53(A)(2) to determine:

- Good cause exceptions by considering applications from individuals whose fingerprint clearance cards have been denied or suspended by the Arizona Department of Public Safety and who are trying to demonstrate that they are rehabilitated and not recidivists, and
- Central-registry exceptions by considering applications from individuals who are listed in a set of Department of Child Safety databases called the Central Registry, have been disqualified after a Central-Registry background check, and are trying to demonstrate that they're rehabilitated and not recidivists.

The Board's mission is to fairly, expeditiously, and responsibly determine good cause exceptions and central-registry exceptions for applicants. Pursuant to A.R.S. § 41-619.53(A)(2) the Board is required to adopt rules for good cause and central registry exceptions, which are exempt from the rulemaking requirements in A.R.S. §§ 41-1001 *et seq.* The Board has made six rulemakings since its inception, but has not written economic impact statements because of the exemption from rulemaking in A.R.S. § 41-619.53(A)(2). The Board is reviewing its nine rules in this five-year-review report and has included an analysis of the economic impact of the rules.

## **Information That is Identical For All Rules**

**1. Authorization of the rule by existing statute**

All of the rules have general authority in A.R.S. § 41-619.53(A)(2). Specific authority is stated in the individual rule.

**4. Analysis of consistency with state and federal statutes and rules**

All of the rules are consistent with state statutes and rules. Federal law does not apply.

**5. Status of enforcement of the rules**

All of the rules are being enforced as written.

**6. Analysis of clarity, conciseness, and understandability**

Most of the rules are clear, concise, and understandable. Specific analysis of clarity, conciseness, and understandability is stated in the individual rule.

**7. Written criticism of the rules received in the last five years**

The Board has not received any written criticisms of the rules in the last five years.

**8. Comparison of the current economic, small business, and consumer impact statement**

In this comparison, minimal means less than \$1,000, moderate means between \$1,000 and \$5,000 and substantial means greater than \$5,000.

A.A.C. Title 13, Chapter 11, consisting of Sections R13-11-101 through R13-11-105 was first adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999. The rules were later amended by exempt rulemakings in August 2003, September 2003, September 2007, August 2012, and September 2012. The Board does not have any economic impact statements for these exempt rulemakings.

Generally, the Board bore minimal costs for writing the rules, fulfilling requirements imposed by the Governor's Regulatory Review Council and Secretary of State, and for notifying and answering questions from the regulated community and interested persons regarding the rulemakings.

**August 1999 Rulemaking**

The exempt rules that became effective on August 19, 1999 were promulgated to implement A.R.S. §§ 41-619.53 and 41-619.55, which required the Board to conduct good cause exception hearings for the issuance of class 1 and class 2 fingerprint clearance cards. The rules provided the requirements for requesting a good cause exception hearing,

including the form and materials to be submitted to the Board; notification by the Board of either granting or denying the request; and a confidentiality provision for criminal history information within the Board's possession. The startup costs for the Board were covered by the legislation, which appropriated \$60,000 for FY 1999-2000 for equipment, two full time (FTE) employees, personal services, employee related expenses, and other operating costs. Because the funding was inadequate, the Board was able to employ only one of the FTEs. These costs can also be attributed to the legislation.

From 1999 to 2003 the good cause exception hearings were conducted by the Board. Costs to the Board were minimal and depended on the length and complexity of the hearing. Costs to an applicant requesting a good cause exception hearing were minimal for obtaining and sending the materials required in R3-11-104. If a good cause exception is denied, the costs to an applicant could be substantial because the applicant would not be able to work in a setting that required a fingerprint clearance card.

#### **August 2003 Rulemaking**

In exempt rules effective August 1, 2003, the Board amended the rules by adding a definitions section and fees provision to generate funds for its operations. Legislation in 2003, Laws 2003, Ch. 214, §§ 16-18 exempted the Board's fund from lapsing of appropriations. R13-11-107 was written to allow DPS to collect a \$3.00 fee for the Board at the same time that DPS collected its own fee for its operations for processing fingerprint clearance cards and transfer the fee to the Board. The Board began receiving the fee in October 2003 and collected \$151,730 in FY 2004 plus an appropriation from the state general fund to allow the Board to operate. Costs to DPS to transfer the fee were minimal. Costs for an applicant were minimal for the fee. The benefit to the Board for the fee transfer was substantial. The clarification of terms in the rules benefitted the Board and the applicant by affording consistent interpretation of the rules.

#### **September 2003 Rulemaking**

Laws 2003, Ch.214, §§ 16-18 also led to another exempt rulemaking effective September 26, 2003. The Board significantly amended its rules to reflect changes to the Board's process, implement statutory changes, add definitions, and to make grammatical changes. The statutory changes included directing the Board or Board appointed hearing officer to conduct a good cause hearing exception if the applicant does not qualify for a fingerprint

clearance card. In the beginning of 2003, the Board began using the Office of Administrative Hearings (OAH) hearing officers and a definition of “hearing officer” was provided in the rulemaking. In FY2004 Board costs for OAH hearings were substantial at \$34,913.00. The Board costs in FY 2005 were \$25,000 and in FY2006, \$12,500. The benefits to OAH were substantial. The Board stopped using OAH in FY2006.

The rules also explained how the Board conducts expedited review and criteria for determination of good cause exception or central registry exception under expedited review. Costs to an applicant to request expedited review and to the Board for expedited review should be minimal. The Board also provided definitions, which benefitted the Board and the applicant by affording consistent interpretation of the rules.

### **September 2007 Rulemaking**

In exempt rules effective September 19, 2007, the Board established time-frames for receipt of an application to expedited review, from expedited review to hearing, and from hearing to decision. The Board also hired its first hearing officer in November 2006 and another in August 2007 to conduct its hearings. The rules minimally affected an applicant, the Board, and the Board’s hearing officers. The Board also added and amended definitions to provide consistent interpretation of the rules, which benefitted the Board, applicant, and the Board’s hearing officers.

### **August 2012 Rulemaking**

In exempt rules effective August 8, 2012 the Board amended rules to implement Laws 2012, Ch. 188, which required the Board to consider applications for central registry registration and created a new statute, A.R.S. § 41-619.57, to govern the process for central registry exceptions. The Board established rules for the central registry application process in R13-11-104(B). Costs from these rules for applicants to obtain documents required in the rules were minimal Costs were also minimal for the Board to process the documents.

### **September 2012 Rulemaking**

In exempt rules effective September 25, 2012, the Board increased its fee for good cause exception and central registry exception application from \$3.00 to \$7.00, which is charged as a portion of the fingerprint clearance fee collected by DPS and transferred to the Board by DPS. The cost for DPS to make the transfer is minimal. If DPS has to make

changes to a form that includes the increased fee, the cost could be minimal to moderate to DPS. The fee increase is minimal to an applicant to meet the requirements of either exception. The increased amount is used for Board operations and provides a substantial benefit to the Board. The Board currently has 5.75 FTEs, including the executive director, 2.75 hearing officers, one investigator, and one administrative assistant. The Board received 2,644 applications in FY2013 for good cause exceptions and 23 for central registry exceptions.

9. **Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on business in other states:**

Such an analysis was not submitted to the Board.

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report**

This is the first five-year-review report conducted by the Board.

11. **A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:**

The Board has determined that the rules impose the least burden and costs.

12. **A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:**

There is no corresponding federal law, so this provision does not apply.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037 (relating to issuing general permits):**

The Board does not issue a general permit.

14. **Proposed course of action**

Although the rules are mostly effective and require little revision, the Board has identified some clarification issues that will require minor amendments to the rules. Since the rules are exempt from Title 41, Chapter 6 according to A.R.S. 41-619.53(A)(2), the

Board expects to make the changes within the six months following approval of this report.

## **Information That is Identical Within Groups of Rules**

### **3. Analysis of effectiveness in achieving the objective**

The following rules are effective in achieving their objective:

R13-11-105

R13-11-110

The following rules are mostly effective in achieving their objective:

R13-11-102

R13-11-104

R13-11-106

R13-11-107

R13-11-108

R13-11-109

R13-11-113

## **R13-11-102 Definitions**

### **2. Objective of the rule**

The objective of the rule is to define terms used in the rules to make the rules understandable to the reader, achieve clarity in the rules, and afford consistent interpretation.

### **3. Analysis of effectiveness in achieving the objective**

Except as stated in paragraph 6, most of the rule is effective.

### **6. Analysis of clarity, conciseness, and understandability**

Most of the rule is clear, concise, and understandable, but uses terms that are redundant because they are already contained in the Board's authorizing statutes, such as "central registry exception", uses wording in the rule definition of "expedited review" that is different from that in A.R.S. § 41-619.51(4), and uses different wording than in A.R.S. § 41-619.51(5) for "good cause exception".

### **14. Proposed course of action**

The Board will address the issues raised in paragraph 6 when it amends the rules.

## **R13-11-104 Application Requirements**

### **1. Authorization of the rule by existing statute**

A.R.S. §§ 41-619.53, 41-619.55, 41-619.57

### **2. Objective of the rule**

The objectives of the rule are to state the documents, materials, and information that must be submitted to the Board for a good cause exception or central registry exception so that the Board may determine whether to grant or deny the exception requests.

### **3. Analysis of effectiveness in achieving the objective**

Most of the rule is effective except as stated in paragraph 6.

### **6. Analysis of clarity, conciseness, and understandability**

Most of the rule is clear, concise, and understandable, but contains passive language, contains language that could be more concise as in R13-11-104(A)(1), and could define "charge" to clarify what is meant by the word.

### **14. Proposed course of action**

The Board will address the issues raised in paragraph 6 when it amends the rules.

## **R13-11-105 Expedited Review**

### **1. Authorization of the rule by existing statute**

A.R.S. §§ 41-619.53, 41-619.55, 41-619.57

**2. Objective of the rule**

The objective of the rule is to state the process for determining whether the Board will hold an expedited review for a good cause exception or central registry exception and what happens when an applicant is determined to be eligible or not eligible for a good cause exception or central registry exception.

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

**1. Authorization of the rule by existing statute**

A.R.S. §§ 41-619.53, 41-619.55, 41-619.57

**2. Objective of the rule**

The objective of the rule is to provide information to an applicant about how the applicant may request the Board to vacate, reschedule, or continue a hearing or how a hearing may be reconvened.

**3. Analysis of effectiveness in achieving the objective**

Most of the rule is effective except as stated in paragraph 6.

**6. Analysis of clarity, conciseness, and understandability**

Most of the rule is clear, concise, and understandable, but uses terms that are not defined such as “party” and “reasonable” and should clarify that a written request to vacate or reschedule may be made at any time before a hearing.

**14. Proposed course of action**

The Board will address the issues raised in paragraph 6 when it amends the rules.

**R13-11-107 Telephonic Testimony**

**1. Authorization of the rule by existing statute**

A.R.S. §§ 41-619.55, 41-619.57

**2. Objective of the rule**

The objectives of the rule are to inform an applicant how to request telephonic testimony at a hearing and the standards for the Board’s allowance of such a request.

**3. Analysis of effectiveness in achieving the objective**

Most of the rule is effective except as stated in paragraph 6.

**6. Analysis of clarity, conciseness, and understandability**

Most of the rule is clear, concise, and understandable, but should clarify that the written request for telephonic testimony may be made at any time before a hearing.

**14. Proposed course of action**

The Board will address the issues raised in paragraph 6 when it amends the rules.

**R13-11-108 Hearings**

**1. Authorization of the rule by existing statute**

A.R.S. §§ 41-619.53, 41-619.55, 41-619.57

**2. Objective of the rule**

The objectives of the rule are to state what happens if an applicant fails to appear at a hearing, what constitutes and does not constitute good cause for failing to do so, and when the Board is required to grant or deny a good cause exception or central registry exception.

**6. Analysis of clarity, conciseness, and understandability**

Most of the rule is clear, concise, and understandable, but it does not state what constitutes “reasonable diligence.”

**14. Proposed course of action**

The Board will address the issue raised in paragraph 6 when it amends the rules.

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

**1. Authorization of the rule by existing statute**

A.R.S. §§ 41-619.53, 41-619.55, 41-619.57

**2. Objective of the rule**

The objectives of the rule are to define “ex parte communication” and “person outside the Board”, state who is not allowed to provide ex parte communications, state what happens when the rule is violated, and state when enforcement of the rule begins.

**6. Analysis of clarity, conciseness, and understandability**

Most of the rule is clear, concise, and understandable, but would be clearer if the word “proceeding” was changed to “hearing”.

**14. Proposed course of action**

The Board will address the issue raised in paragraph 6 when it amends the rules.

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

**Authorization of the rule by existing statute**

The rule is authorized by A.R.S. § 41-1092.09.

**2. Objective of the rule**

The objectives of the rule are to describe the procedures for requesting a rehearing or review and explain the Board's process for denying or granting such a request.

**R13-11-113 Fees**

**1. Authorization of the rule by existing statute**

A.R.S. § 41-619.53(A)(5)

**2. Objective of the rule**

The objective of the rule is to establish a fee for good cause exceptions and central registry exceptions.

**3. Analysis of effectiveness in achieving the objective**

The rule is mostly effective but could be more effective for the reason stated in paragraph 6.

**6. Analysis of clarity, conciseness, and understandability**

Most of the rule is clear, concise, and understandable, but would be clearer if it was written in the singular form. For example, "exceptions" should be changed to "exception".

**14. Proposed course of action**

The Board will address the issues raised in paragraph 6 when it amends the rules.