

Notices of Proposed Summary Rulemaking

NOTICES OF PROPOSED SUMMARY RULEMAKING
Initiated After January 1, 1995

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, or repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rulemaking with the Governor's Regulatory Review Council and the Secretary of State's Office for publication in the next available issue of the Register. The proposed summary rule takes interim effect on the date of publication in the Register.

NOTICE OF PROPOSED SUMMARY RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY
POLYGRAPH EXAMINERS

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 1 | Repeal |
| R13-7-101 | Repeal |
| R13-7-102 | Repeal |
| R13-7-103 | Repeal |
| R13-7-104 | Repeal |
| R13-7-105 | Repeal |
| R13-7-106 | Repeal |
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 Authorizing statute: A.R.S. § 41-1713(A)(3)
 Implementing statute: A.R.S. § 41-2992.04, Laws 1991, Ch. 8, § 10, which repealed authorizing legislation A.R.S. §§ 32-2701 through 32-2715, effective January 1, 1993.
 3. **The interim effective date of the proposed summary rules:**
 January 26, 1996
 4. **Is this rulemaking a renewal of a previous emergency rulemaking?**
 No.
 5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
 Name: Lt. Tom Clinkenbeard
 Licensing, Permits, and Handgun Clearance Section
 Address: Department of Public Safety
 P.O. Box 6488
 Phoenix, Arizona 85005-6488
 Telephone: (602) 223-2238
 Fax: (602) 223-2928
 6. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.**
 The Department of Public Safety intends to repeal this Article since the authorizing legislation for licensing commercial polygraph examiners was repealed on January 1, 1993, by A.R.S. § 41-2992.04
 7. **The preliminary summary of the economic, small business, and consumer impact:**
 Not applicable according to A.R.S. § 41-1055(D)(2).
 8. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
 Not applicable.
 9. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:**
 No oral proceedings or hearings are planned. Written comments on the repeal of these rules must be received at the mailing

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address listed under Question 4, by 5 p.m. on February 26, 1996.

10. **An explanation of why summary proceedings are justified:**
A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking when an agency's rules become obsolete by repeal of the agency's statutory authority. The Department's authority to license polygraph examiners was repealed on January 1, 1993.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules.**
Not applicable.
12. **Incorporations by reference and their location in the rules:**
None.
13. **The full text of the rules follows:**

TITLE 13. PUBLIC SAFETY

**CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY
POLYGRAPH EXAMINERS**

ARTICLE 1. IN GENERAL

- R13-7-101. Definitions
- R13-7-102. General Provisions
- R13-7-103. Investigations and Hearings
- R13-7-104. Powers and Duties of the Board
- R13-7-105. Causes for Punitive Action
- R13-7-106. Licensing Provisions

ARTICLE 1. IN GENERAL

R13-7-101. Definitions

Unless the context requires otherwise, the definitions set forth govern the construction of these rules:

1. "Director" means the Director of the Department of Public Safety.
2. "Intern" means the study of polygraphy and the administration of polygraph examinations by a trainee for a period of 12 months under the personal supervision and control of a licensed examiner of this state.
3. "Member" means any member of the Polygraph Examiners Advisory Board.
4. "Resident" means any person meeting the requirements set forth in A.R.S. § 16-925.
5. "Licensee" means any person holding a license by the Department of Public Safety to conduct polygraph examinations.
6. "Polygraph Examiner" means any person who uses any device or instrument which records as a minimum standard, permanently and simultaneously, the examinee's cardiovascular and respiratory patterns, and galvanic skin response, in order to examine individuals for the purpose of detecting truth or deception. Such an instrument may record additional physiological changes pertinent to the detection of truth or deception.
7. "School" is a course of study of polygraphy in any public or private institution that has been licensed by the Department of Education in the state wherein that school is located, or any government polygraph school, and which has been approved by the American Polygraph Association and the Department of Public Safety.

R13-7-102. General Provisions

- A. Delegation of responsibility. Whenever a power is granted or a duty imposed upon the Board or any Member of the Board by the Director or by these rules, that power may be exercised or the duty performed by a person authorized by the Director, unless it is expressly otherwise provided.
- B. Service of notice. Whenever the notice, paper, or document is directed to be given to any person, such notice, paper, or docu-

ment may be personally served or it may be served by certified or registered mail to the last known residence or business address of said person. Unless otherwise specifically provided by statute, the giving of notice of matters to be heard by this Board shall be governed by the rules of this Board.

- C. Reference to laws and rules. Whenever reference is made to any portion of these rules, the reference applies to all amendments and additions to the law or these rules.
- D. Validity and separation. If any provision of these rules or the application thereof to any person or circumstances is held invalid, the remainder of the rules or the application of such provision to other persons or circumstances shall not be affected thereby.
- E. Election of officers. The Board shall elect a Chairman and Secretary from among the membership at a regular meeting in the month of December of each even numbered year. Both the Chairman and Secretary shall hold office for a period of 2 years or until they resign said positions or their successors are elected.
- F. Meetings. Meetings shall be held from time to time as determined to be necessary by the Director, by the Chairman or, in his absence, the Secretary. Board meetings shall be open to the public and any interested person shall be given reasonable opportunity to be heard on any issue.
- G. Quorum. A majority of the Members of the Board constitutes a quorum. The vote of 3 concurring Members shall be required to make any actions or recommendations of the Board effective.
- H. Minutes. The Board shall keep tape recordings of its own proceedings. Such recordings shall be open to public inspection, subject to reasonable regulations. The Board shall not be required to transcribe said recordings. If any appeal is taken from any action or recommendation of the Board, appellant must bear the cost of transcription of the tape recordings.

R13-7-103. Investigations and Hearings

- A. Investigations
 1. The Board shall conduct investigations and hold hearings at the direction of the Director concerning all matters relating to the enforcement and effect of these rules.
 2. Investigations or hearings may be commenced upon petition of any licensee or any citizen, or upon request by a member of the Board or by the Director.
 3. When alleged misconduct of a licensee is brought to the attention of the Board, the Board must commence proceedings to determine facts and make recommendations to the Director within a reasonable time.
- B. Effect of investigation or hearing. The Board shall make findings of fact and recommendations and submit same to the

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Director in any case in which a license is to be issued by the Department of Public Safety, pursuant to A.R.S. § 32-2701 et seq. or in any case in which the Board recommends punitive action against a licensee.

- C. Notice of hearing. Whenever a hearing is to be held, the Board shall notify the interested person or persons, parties thereto, personally or by registered mail of the time and place of the hearing, at least 20 days before the scheduled hearing.
- D. Failure to appear. If a person fails, without just cause, to appear at the time and place set for hearings of investigations or fails to provide relevant documentation, the Board, as a consequence thereof, may make any findings or recommendations as it may deem proper from the facts submitted.
- E. Conduct of hearings or investigations. The Board may sit as a whole at a hearing or investigation, or the Chairman may designate one of the members to conduct an investigation and make recommendations to the Board as a whole.
- F. Proceedings. All hearings and investigations authorized by these rules shall be governed by A.R.S. §§ 41-1009 through 41-1037.
- G. Open hearings. Hearings held pursuant to these rules shall be open to the public and to persons involved as principal parties or witnesses. A witness may be excluded during the examination or statements of other witnesses or the licensee or applicant.
- H. Legal counsel. Before the hearing of any disciplinary action, each interested party, that is the Department and the licensee or applicant, shall designate for purposes of record the presence of his or her counsel if he or she has counsel. The member conducting the hearing shall advise each party without legal counsel that the party is entitled to counsel if the party so desires. If either party wishes to proceed without counsel, the member conducting the hearing shall require a specific statement for purposes of the record from each party indicating the party's willingness to proceed without legal counsel.
- I. Presentation of evidence. Both the licensee and the Department, through the Departmental Advocate, may appear at any hearing or investigation and may present their evidence and witnesses either personally or through their chosen legal representative. While evidence irrelevant to the causes of the punitive action may be excluded by the Board, both parties shall be allowed reasonable latitude in the presentation of their evidence without strict adherence to the Arizona Rules of Evidence.
- J. Recommendation. The Board shall render a recommendation within a reasonable time after a hearing is completed, but not later than 20 days. In the case of a punitive action, in arriving at a recommendation, the Board may consider any prior proceedings under these rules. The recommendation rendered shall be in writing and shall contain findings of fact and a recommendation for disposition of the case. The recommendation of the Board shall be forwarded to the Director, who shall notify the applicant or licensee his or her decision in writing, such decision being sent to the applicant's or licensee's last known address. The Director shall notify an applicant or licensee of his or her rights to an appeal under these rules.
- K. Motion for rehearing. Any party aggrieved by a decision of the Director may file with the Director a Motion for Rehearing,

which Motion shall be filed and considered in accord with the standards set forth in 16 A.R.S. Rules of Civil Procedure, Rule 59.

- L. Petition for review. Within 35 days of an adverse decision of the Director, the licensee, or applicant may appeal to the Superior Court pursuant to A.R.S. § 12-904.

R13-7-104. Powers and Duties of the Board

- A. Rules. The Board may recommend rules, amendments, and repeal of rules to the Director in accordance with law for the administration and enforcement thereof.
- B. Punitive action. The Board may recommend punitive action to the Director in the form of a refusal to issue a license, suspension of a license, or revocation of a license. Punitive action may be taken for any reason set forth in R13-7-105.
- C. Roster. The Board shall establish and maintain in suitable form an official roster of all persons licensed by the Director.

R13-7-105. Causes for Punitive Action

The Board may recommend that the Director deny an applicant seeking a license or initiate punitive action against any licensee licensed pursuant to A.R.S. § 32-2701 et seq. for any grounds specified in A.R.S. § 32-2713.

R13-7-106. Licensing Provisions

- A. Examination date. Examinations for the issuance of licenses pursuant to A.R.S. § 32-2701 et seq. shall be conducted on the 2nd Thursday of the months of March and September of each calendar year at the Department's headquarters.
- B. Requirements of the exam. Examinations shall consist of written and oral portions. A Board member shall conduct the written examination; a majority of the Board shall conduct the oral examination. Any applicant shall receive a score of at least 70% on the written examination to qualify to take the oral examination.
- C. Consent to service. Each nonresident applicant must file an irrevocable consent that service of process may be made on the Department in any actions or claims arising against such applicant in this state.
- D. Application. The Board shall refuse to allow an applicant to take any examination based on information, or the lack of information, contained in the application form completed by the applicant, if there is an apparent violation of these rules or any statute. Any such disqualified applicant shall be notified of the reason for his rejection and shall be given a reasonable opportunity to be heard by the Board as to those reasons, before the next following examination.
- E. Deadline. The deadline for receipt of applications by the Board is 90 days prior to the scheduled examination. For good cause shown, the Board may waive this deadline.
- F. Re-examination. Any person failing the examination shall be eligible to take the next following examination provided the person meets all other qualifications at that time.
- G. License period. A license issued pursuant to these rules shall be valid for a period of 1 year. Licenses for polygraph interns shall be issued for a period of 6 months. After the expiration of 6 months, the intern may have his or her intern license renewed upon a showing of good cause.