

Notice of Contested Case Rights and Procedures in Driver and Motor Vehicle Services Implied Consent Hearings

Pursuant to Oregon Revised Statutes (ORS) 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing:** The hearing will be held within 30 days of your arrest, or if you failed a blood test, the hearing will be held within 30 days of the date Driver and Motor Vehicle Services (DMV) sends the notice of suspension for the blood test failure. The Office of Administrative Hearings (OAH) will notify you of the time and place of the hearing.
2. **Scope of hearing:** The scope of the hearing is limited to whether a suspension of driving privileges is valid under ORS 813.410(8). Under ORS 813.410(8), a suspension is valid if all of the following requirements are met:
 - a. At the time you were asked to take a breath, blood or urine test, you were under arrest for driving under the influence of intoxicants in violation of ORS 813.010 or municipal ordinance.
 - b. The police had reasonable grounds to believe, at the time you were asked to take a test, that you had been driving under the influence of intoxicants in violation of ORS 813.010 or municipal ordinance.
 - c. Either you refused a test under ORS 813.100, or you took a test and the test disclosed the the level of alcohol in your blood was sufficient to constitute being under the influence of intoxicants under Oregon law.
 - d. That you were in fact driving a Commercial Motor Vehicle, if the law enforcement agency report indicated that you were.
 - e. You were informed, under ORS 813.100, of the rights and consequences described in ORS 813.130.
 - f. You received written notice of DMV's intent to suspend your driving privileges, as required under ORS 813.100.
 - g. If you submitted to a test, the person administering the test was qualified to administer the test under ORS 813.160.
 - h. If you submitted to a test, the methods, procedures and equipment used in the test complied with ORS 813.160.

You have the right to respond to all issues properly before the Administrative Law Judge (ALJ), and to present evidence and witnesses on those issues.

3. **Authority and jurisdiction for hearing:** The matter set for hearing is a contested case. The hearing will be conducted as provided by the Administrative Procedures Act, ORS Chapter 183, its implementing rules, and the statutes and rules of the Oregon Department of Transportation (ODOT), DMV as follows:
 - a. ORS 813.410.
 - b. ORS 813.132, if applicable (Consequences of refusing to take urine test).
 - c. ORS 183.310 to 183.470 (Administrative Procedures Act), except as otherwise provided by ORS 813.410.
 - d. Oregon Administrative Rules (OAR) Chapter 735, Division 90 (DMV's implied consent rules).
 - e. OAR 137-003-0501 to 137-003-0700, except as required by ORS 813.410.
4. **Right to attorney at a hearing:** You may be represented by an attorney at your expense. Motorists are ordinarily and customarily represented by an attorney at implied consent hearings, but it is not required, and you may represent yourself. DMV will not be represented by an attorney. If you are not represented by an attorney, a recess will not be granted during the hearing for you to hire or contact an attorney.
5. **Legal aid organizations may be able to assist you if you have limited financial resources.**
6. **Notice to active duty servicemembers:** Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department (OMD) at 971-453-1175 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. OMD does not have a toll-free telephone number.
7. **Administrative Law Judge:** The hearing will be conducted by an Administrative Law Judge (ALJ). The ALJ will rule on all matters raised at the hearing. The ALJ has authority to make a final, independent decision. The ALJ will be assigned by the Chief ALJ from OAH. The OAH consists of employees of, and independent contractors with, the Chief ALJ.
8. **Discovery:** Discovery is permitted in this proceeding, as described in OAR 735-090-0066, and will be provided if requested in writing.

CONTINUED ON REVERSE

9. **Witnesses and Subpoenas:** All witnesses must testify under oath or affirmation to tell the truth. Any witness who testifies may be examined by the ALJ, by the police officer, pursuant to ORS 813.412, and by you or your attorney, if you have one. The reporting officer identified on the Implied Consent Combined Report form will be subpoenaed to the hearing. You may have witnesses subpoenaed to appear at the hearing on your behalf by submitting a request for a subpoena to OAH or DMV. If you have an attorney, your attorney may issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person you subpoenaed is your responsibility. Subpoenas must be properly served at least 72 hours in advance of the hearing.
10. **Order of evidence:** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and if DMV's proposed action is appropriate. The order of presentation of evidence is normally as follows:
- Testimony of witnesses and other evidence of DMV in support of its proposed action.
 - Testimony of your witnesses and your other evidence.
 - Rebuttal evidence by DMV and by you.
11. **Burden of presenting evidence:** The burden of presenting evidence to support an allegation or position rests on the proponent of the allegation or position. Normally, each fact must be proved by a preponderance of evidence, meaning each fact must be shown to be more likely than not. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the agency has the burden of proof, you must come to the hearing prepared to present evidence to support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ or officer. The hearing will not be postponed for you to gather additional evidence. You may not present additional evidence after the hearing record is closed. However, at the end of the hearing, if you can show the record should remain open for additional evidence, the ALJ may grant additional time for you to submit that evidence.
12. **Admissible evidence:** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. ORS 183.450(1). Evidence that is irrelevant, immaterial, or unduly repetitious is excluded. Hearsay evidence is often admissible. The fact that it is hearsay generally affects how much reliance the agency or ALJ will place on it in reaching a decision. The ALJ will rule on all objections and will make such rulings known at the time of the hearing or in the final order. The ALJ will only consider evidence which has been admitted into evidence when reaching a determination. There are four kinds of evidence:
- Knowledge of the agency or ALJ: The agency or ALJ may take "official notice" of facts based on the agency's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or ALJ may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency takes judicial or official notice of any fact and you will be given an opportunity to contest any facts so noticed.
 - Testimony of witnesses: Testimony of witnesses, including you, who have knowledge of the facts may be received in evidence.
 - Writings: Written documents including letters, maps, diagrams and other written material may be received in evidence.
 - Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.
13. **Objections of evidence:** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
- The evidence is unreliable.
 - Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
 - Immaterial. The evidence is offered to prove a proposition which is not an issue in the hearing.
 - Unduly repetitious. The evidence merely repeats what already has been offered and admitted.
14. **Evidence for appeal:** This may be done by use of a tape or digital recorder. The record is generally not transcribed unless there is an appeal pursuant to ORS 813.410(10) and 813.450. You may get a copy of the recording if you pay the required fee. If you appeal, you will get a transcript of the recording from the hearing.
15. **Final Order:** The ALJ will issue the final order in this case, usually within 10 days after the hearing. Because the ALJ will issue the final order, there will be no opportunity for you to object to the order or to present additional arguments prior to issuance of the order.
16. **Appeal:** If the final order upholds the suspension, you may appeal the order. If you are an Oregon resident, to appeal you must file a petition for judicial review in the circuit court for the county where you reside. If you are not an Oregon resident, you must file a petition for review in the circuit court for the county where you were arrested.

To appeal the final order, you must file the petition for judicial review within 30 days after the final order is issued. The petition must contain a copy of the final order. Copies of the petition must be served on the Attorney General or designee and upon DMV. The review in the circuit court is limited to the record of the hearing. It is held by a judge without a jury. It is subject to Chapter 10 of the Uniform Trial Court Rules. **An appeal to the circuit court WILL NOT postpone the suspension of your driving privileges (ORS 813.410(9)).**