



DEPARTMENT OF TRANSPORTATION
DRIVER AND MOTOR VEHICLE SERVICES
1905 LANA AVE NE, SALEM OREGON 97314

NOTICE OF RIGHTS AND PROCEDURES IN DRIVER AND MOTOR VEHICLE SERVICES IMPLIED CONSENT HEARINGS

If you request a hearing, you should read this information to prepare for the hearing.

1. **Right to attorney at a hearing:** You have the right to be represented by an attorney at your expense. Legal aid organizations may be able to assist you if you have limited financial resources. Driver and Motor Vehicle Services (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.
2. **Laws that apply:** The hearing will be conducted under all of the following:
 - a. Oregon Revised Statute (ORS) 813.410, and/or ORS 813.132.
 - b. ORS 183.310 to 183.470 (part of the Administrative Procedure Act), except as otherwise provided by ORS 813.410.
 - c. Oregon Administrative Rules (OAR) Chapter 735, Division 90, beginning at OAR 735-090-0000.
 - d. OAR 137-003-0501 to 137-003-700 except as required by ORS 813.410.
3. **Scope of hearing:** The scope of the hearing is limited to whether a suspension of driving privileges is valid under ORS 813.410(5). According to ORS 813.410(5)(a), 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 state law 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 state law or municipal ordinance.
 - c. Either you refused a test, or you took a test and the test disclosed that the level of alcohol in your blood was sufficient to constitute being under the influence of intoxicants under Oregon law.
 - d. You were informed of the statutory consequences of refusal to submit to a test.
 - e. You were informed of your statutory rights.
 - f. You received written notice of intent to suspend.
 - g. If you submitted to a test, the person administering the test was qualified to administer it.
 - h. If you submitted to a test, the methods, procedures and equipment used in the test complied with state law.
 - i. If you were asked to take a urine test, the requesting police officer was certified in recognition of drug impaired driving, and had a reasonable suspicion that you had been driving under the influence of a controlled substance, an inhalent or any combination of an inhalent or a controlled substance and intoxicating liquor.
4. **Subpoenas:** You may have witnesses subpoenaed to appear at the hearing. Your attorney can issue the subpoenas or, upon your written request, Office of Administrative Hearings will prepare subpoenas for you. You must pay for witness and mileage fees. This must be done at the time the subpoena is served.
5. **Administrative Law Judge (ALJ):** The hearing will be conducted by an ALJ assigned from the Office of Administrative Hearings. The ALJ has authority to rule on all matters raised at the hearing. The ALJ also has authority to make a final, independent decision.
6. **Time for 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 DMV sends the notice of suspension for the blood test failure.
7. **Late hearing:** If your hearing request is not **RECEIVED** within 10 days after your arrest, or, if you fail a blood test, within 10 days of the date DMV sends the notice of suspension, or you do not appear in person or through an attorney at your scheduled hearing, you forfeit your hearing rights. DMV may provide a late hearing for you only if the reason you did not ask for a hearing, or appear at the hearing, was caused by one of the following: (a) your physical incapacity; (b) a death in your immediate family; (c) error of the department; (d) a subpoenaed police officer's inability to appear due to either official duty conflicts, vacation, illness; (e) a request for a change of administrative law judge under 183.645; (f) Your attorney's inability to appear due to illness, vacation, or scheduling conflicts with another court or administrator hearing; or (g) other just cause, as defined by DMV administrative rule.

A late hearing granted under exception (a), (b), (e) or (f) **WILL NOT POSTPONE THE SUSPENSION** or extend your temporary driving permit. If you establish, under exception (c), that you were unable to request or appear at a hearing because of error of the department, or exception (d) a subpoenaed police officer's official duty conflict, illness or vacation, your suspension will be rescinded until the ALJ determines whether the suspension is valid.

CONTINUED ON REVERSE

8. You have the right to respond to all issues properly before the presiding officer, and to present evidence and witnesses on those issues.
9. **Order of evidence:** The hearing will be conducted in this sequence:
 - a. Pre-hearing review of the notice of hearing, request for hearing, the implied consent form received by DMV from the law enforcement agency, the Notice of Rights and Procedures, and for blood test failures DMV's notice of suspension.
 - b. Evidence in support of the suspension.
 - c. Your statement and evidence disputing DMV actions.
 - d. Rebuttal testimony.
10. **Burden of presenting evidence:** The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position. You must come to the hearing prepared to present evidence to support your position. 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 administrative law judge may grant additional time for you to submit that evidence.
11. **Discovery:** Discovery is permitted in implied consent cases, and will be provided if requested in writing.
12. **Witnesses:** All witnesses must testify under oath or affirmation to tell the truth. Any witness who testifies may be examined by the administrative law judge, by the police officer and by the party.
13. **Admissible evidence:**
 - a. Knowledge of the agency. The administrative law judge may take 'judicial notice' of commonly known facts and 'official notice' of facts and conclusions developed from experience in the specialized field of activity. Official notice includes notice of technical or scientific facts. You will be informed at the hearing if the agency takes judicial or official notice of any fact. This will allow you the opportunity to contest that fact.
 - b. Testimony of witnesses. This includes your own testimony.
 - c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.
 - d. Experiments, demonstrations and similar means used to prove a fact.
 - e. Evidence of a type commonly relied upon by reasonably prudent people in the conduct of their serious affairs may be admitted.
 - f. Hearsay evidence may be admitted. An objection to hearsay evidence may affect the weight given to the evidence.
14. **Objections of evidence:** Objections to allowing evidence to be admitted may be made on any of the following grounds:
 - a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
 - b. Immaterial. The evidence is offered to prove a proposition which is not an issue in the hearing.
 - c. Unduly repetitious. The evidence merely repeats what already has been offered and admitted.
15. **Rulings on evidence:** The administrative law judge will rule on all objections. All rulings will be made known at the hearing or in the final order. The administrative law judge will consider only admitted evidence when reaching a final determination.
16. **Record:** All hearings are recorded. This saves the evidence for appeal from the final order. 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. You do not have to pay for this transcript unless your petition for review is found to be frivolous.
17. **Final order and appeal:** The administrative law judge usually issues the decision within 10 days after the hearing. It will not be in the form of recommendations or proposals which allow further review, but will be a final order. If the final order upholds the suspension, you may appeal the order. If you are an Oregon resident, you do this by filing a petition for review in the Circuit Court for the county where you reside. If you are **not** an Oregon resident, you do this by filing a petition for review in the Circuit Court for the county where you were arrested.

If you want to appeal the final order, you must file the petition for 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 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 CIRCUIT COURT WILL NOT POSTPONE THE SUSPENSION OF YOUR DRIVING PRIVILEGES.
ORS 813.410(6)