

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Transportation, Driver and Motor Vehicle Services Division

735

Agency and Division

Administrative Rules Chapter Number

Lauri Kunze

355 Capitol St. NE, Rm. 29 Salem, OR 97301

lauri.g.kunze@odot.state.or.us

(503) 986-3171

Rules Coordinator

Address

Telephone

RULE CAPTION

When Police Officer Unable to Appear at Hearing /Original Hearing as Used in ORS 813.440(1)(f)

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

RULEMAKING ACTION

ADOPT: 735-090-0125

AMEND: 735-090-0120

REPEAL:

ORS 183.341, 184.616, 184.619, 802.010, 813.410 and 813.440

None

Stat. Auth.

Other Authority

ORS 813.410 and 813.440

Stats. Implemented

RULE SUMMARY

ORS 813.440 as amended by Section 1, Chapter 520, Oregon Laws 2009 (HB 2968) allows a hearing to determine the validity of a suspension ordered due to implied consent laws to be scheduled outside of the time requirements of ORS 813.410 due to the inability of the person's attorney to appear due to the attorney's illness, vacation or scheduling conflict arising from other court or administrative hearing appearances. However this section does include a provision that the hearing must be rescheduled no later than 45 days after the date of the original hearing. As there are other reasons a hearing may be re-scheduled, before or after a hearing is actually held, a definition of original hearing is needed. DMV proposes to adopt OAR 735-090-0125 to clarify what is considered the original hearing date for purposes of determining whether a hearing can be re-scheduled due to an attorney's illness, vacation or scheduling conflict.

DMV also proposes to amend OAR 735-090-0120 that describes what the process is for rescheduling a hearing to determine the validity of a suspension under ORS 813.410 when a police officer is unable to appear at the hearing. The Office of Administrative Hearings (OAH) reschedules a hearing for an officer's illness, vacation or official duty conflict. The proposed changes to OAR 735-090-0120 will clarify what happens whenever a police officer is unable to attend a hearing due to the officer's illness, vacation or official duty conflict.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

October 21, 2009

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Signature

Lauri Kunze

Printed name

Date

* The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Transportation, Driver and Motor Vehicle Services Division
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735
Administrative Rules Chapter Number

In the Matter of the Amendment of OAR 735-090-0120 and Adoption of OAR 735-090-0125

Rule Caption: When Police Officer Unable to Appear at Hearing /Original Hearing as Used in ORS 813.440(1)(f)

Statutory Authority: ORS 183.341, 184.616, 184.619, 802.010, 813.410 and 813.440

Other Authority: None

Statutes Implemented: ORS 813.410 and 813.440

Need for the Rule(s): ORS 813.440 as amended by Section 1, Chapter 520, Oregon Laws 2009 (HB 2968) allows a hearing to determine the validity of a suspension ordered due to implied consent laws to be scheduled outside of the time requirements of ORS 813.410 due to the inability of the person's attorney to appear due to the attorney's illness, vacation or scheduling conflict arising from other court or administrative hearing appearances. However this section does include a provision that the hearing must be rescheduled no later than 45 days after the date of the original hearing. As there are other reasons a hearing may be re-scheduled, before or after a hearing is actually held, a definition of original hearing is needed. DMV proposes to adopt OAR 735-090-0125 to clarify what is considered the original hearing date for purposes of determining whether a hearing can be re-scheduled due to an attorney's illness, vacation or scheduling conflict.

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Documents Relied Upon and where they are available: Enrolled House Bill 2968 which can be found at <http://www.leg.state.or.us/09reg/measpdf/hb2900.dir/hb2968.en.pdf>.

Fiscal and Economic Impact, including Statement of Cost of Compliance: None – The proposed rule amendment is specifying current practice so there is no change that will impact anyone. The proposed rule adoption simply specifies how the term "original hearing" will be used for purposes of ORS 813.440 as amended by Section 1, Chapter 520, Oregon Laws 520 (HB 2968) and has no fiscal or economic impact beyond any that may occur from the change in law.

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): None
2. Cost of compliance effect on small business (ORS 183.336): None
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: The law firms, that are small businesses, that handle implied consent cases, are subject to this rule. There are several hundred such small businesses, but DMV is unable to find the information to determine a figure more accurately than that.
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None
 - c. Equipment, supplies, labor and increased administration required for compliance: None

How were small businesses involved in the development of this rule? Fourteen groups representing small businesses were notified of the proposed amendments and invited to comment. No comments were received.

Administrative Rule Advisory Committee consulted? If not, why?: No. The policy change was created by the passage of HB 2968. The proposed rule adoption by DMV is simply a clarification and not something where input from a rule advisory committee would have been beneficial. The amendment of OAR 735-090-0120 is simply putting current processes in administrative rule. Again, input from an advisory committee was not needed.

Authorized Signer

Lauri Kunze
Printed name

Date