



Certification Page Regular and Emergency Rules

Revised September 2016

Emergency Rules *(After completing all of Sections 1 through 3, proceed to Section 5 below)*

Regular Rules

1. General Information

a. Agency/Board Name Attorney General's Office		
b. Agency/Board Address Kendrick Building, 2320 Capitol Avenue	c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Mike Kahler		f. Agency Liaison Telephone Number 307-777-7196
g. Agency Liaison Email Address mike.kahler@wyo.gov		h. Adoption Date May 14, 2019
i. Program 24/7 Sobriety Program		

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Enrolled Act Numbers and Years Enacted:

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
(Please use the Additional Rule Information form for more than 10 chapters and attach it to this certification)

Chapter Number: 1	Chapter Name: Rulemaking Authority and Definitions	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 2	Chapter Name: Enrollment, Testing and Fees	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

3. State Government Notice of Intended Rulemaking

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: **January 10, 2019**

- approved as to form by the Registrar of Rules; and
- provided to the Legislative Service Office and Attorney General:

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

c. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

5. Final Filing of Rules


a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature: **May 14, 2019**

b. Date on which final rules were approved as to form by the Secretary of State and sent to the Legislative Service Office: **May 14, 2019**

c. The Statement of Reasons is attached to this certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual	
Printed Name of Signatory	Bridget Hill
Signatory Title	Attorney General
Date of Signature	May 14, 2019

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

24/7 Sobriety Program

Statement of Principal Reasons

The Attorney General, under authority granted by Wyoming Statute § 7-13-1705(a), seeks to amend rules to continue to implement the 24/7 Sobriety Program created by Wyoming Statutes §§ 7-13-1701 through -1711. Specifically, the statute requires the Attorney General to implement rules to:

- (i) Provide for the nature and manner of testing and the procedures and apparatuses to be used for testing;
- (ii) Establish fees and provide for the collection of fees. The fees shall be set as low as possible, but shall be set so that the total of fees and other funds credited to the program account defray the entire expense of the program, including all costs to the state[.]

Wyo. Stat. Ann. § 7-13-1705(a).

To continue to fulfill that mandate, the amended rules will expand the drug and alcohol testing options for the Program's participants. At present, drug testing is limited to urine testing and drug patch testing, while alcohol testing is limited to twice daily breath testing. The proposed amendments add saliva testing as an additional drug testing option, and add continuous remote transdermal alcohol monitoring as an additional alcohol testing option. These options were added at the request of members of law enforcement and the judiciary. By adding saliva testing as a drug testing alternative, the Office seeks to reduce staffing requirements associated with urine testing, and to reduce the time required to administer each drug test. By adding continuous remote transdermal alcohol monitoring, the Office seeks to provide flexibility to Program participants in instances where traditional "in person" testing is determined to be unduly burdensome.

The proposed amendments also set fees associated with the new testing options, and modify existing testing fees to reflect increased costs associated with drug patch testing. Finally, the proposed amendments provide for the allocation of participant enrollment fees to specify how those fees should be allocated.

24/7 Sobriety Program

Summary of Comments and Agency Response

The Office of the Attorney General (Office), under authority granted by Wyoming Statute § 7-13-1705(a), is amending rules to implement the 24/7 Sobriety Program created by Wyoming Statutes §§ 7-13-1701 through -1711. The proposed amendments add saliva testing as an additional drug testing option, and add continuous remote transdermal alcohol monitoring as an additional alcohol testing option. The proposed amendments set fees for the new testing options, and also modify existing testing fees to reflect increased costs associated with drug patch testing. Finally, the proposed amendments provide for the allocation of participant enrollment fees.

The Office gave notice of the proposed rules to district and circuit court judges, city and county attorneys, state patrol, police and sheriff's departments, and other interested parties. The Office published notice in a newspaper and on its website on January 4, 2019. The proposed rules were also available in their entirety to view or download from the website. The 45 day comment period ended on February 19, 2019.

No parties requested a public hearing and no hearing is required by law. However, the Office received written comments from two individuals. The comments are summarized and a response is made to each of them below.

Comment:

An individual submitted a comment generally supporting the rule's addition of saliva testing. The commenter also suggested that both the rules and underlying statutes should provide guidance as to attorney general approval of testing devices, minimal performance requirements, ongoing maintenance requirements and testing protocols. The commenter also provided suggestions that they felt would strengthen the program overall in those areas.

Response:

Although the majority of the comments were about the 24/7 Sobriety Program's underlying statutes, or to rules and regulations outside the scope of the proposed amendments, the Office appreciates the commenter's input and will consider each suggestion as the 24/7 Sobriety Program continues to be implemented in Wyoming. With those comments in mind, the Office will continue to review other programs nationwide to ensure continued success and to implement best practices into future rule revisions.

Comment:

One commenter submitted proposed amendments to Chapters 1 and 2, which would add "remote breath testing" as an alternative to "in person breath testing" and to "continuous remote transdermal monitoring" with regard to alcohol testing.

Response:

The Office agrees that “remote breath testing” may prove useful in the continued success of the 24/7 Sobriety Program, and is currently reviewing cost, accuracy, reliability, recidivism rates, success in other states, etc. Although the Office declines to revise the proposed amended rules at this time, it looks forward to continued discussions with the commenter, law enforcement and the judiciary to incorporate remote breath testing into the 24/7 Sobriety Program.

Chapter 1
Rulemaking Authority and Definitions

Section 1. Authority.

These rules are promulgated by the authority of Wyoming Statute § 7-13-1705.

Section 2. Definitions

(a) As used in these rules:

(i) “Continuous remote transdermal alcohol monitoring device” means any electronic instrument that is attached to a person and is capable of determining and monitoring the presence of alcohol in a person’s body. The term includes any associated equipment a participant needs for the device to perform properly;

(ii) “Drug patch” means any type of device that is affixed to a person’s skin that tests for the presence of a controlled substance, as defined in W.S. § 35-7-1002(a)(iv), in the participant’s body;

(iii) “Participant” means a person who has been ordered by a court or directed by the Board of Parole to participate in the 24/7 Sobriety Program;

(iv) “Participating entity” means a county sheriff’s office or a designated entity named by a sheriff that has agreed to participate in the 24/7 Sobriety Program by enrolling participants, administering one or more of the tests, or submitting reports to the Attorney General;

(v) “Participating vendor” means the party that will provide the system that will be used to administer the 24/7 Sobriety Program and that will compile the necessary reports;

(vi) “Participation agreement” means a written document prepared in a form approved by the Attorney General that contains the following:

(A) A statement, signed by the participant, saying that the participant agrees to participate in the 24/7 Sobriety Program;

(B) The type, frequency, and time period of testing;

(C) The testing site location;

(D) The fees and payment procedures required for testing; and

(E) The responsibilities and obligations of the participant under the 24/7 Sobriety Program.

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(A) A statement, signed by the participant, saying that the participant agrees to participate in the 24/7 Sobriety Program;

(B) The type, frequency, and time period of testing;

(C) The testing site location;

(D) The fees and payment procedures required for testing; and

(E) The responsibilities and obligations of the participant under the 24/7 Sobriety Program.

Chapter 2

Enrollment, Testing and Fees

Section 1. Enrollment.

(a) A participating entity shall be provided with a copy of the order from a court or directive from the Board of Parole before enrolling a participant.

(b) A participant placed on the 24/7 Sobriety Program shall be enrolled by a representative of a participating entity as provided in the order or directive.

(c) The participating entity shall enter the participant's information into the reporting system provided by the participating vendor.

(d) The participant shall execute a participation agreement and provide written waivers to the participating entity to allow the release of program information for enforcement and reporting purposes. If the participant refuses to execute the agreement in full, the participant shall be denied participation in the program.

(e) The participating entity shall also provide the participant with information regarding any test ordered or directed, the applicable procedures, and the applicable fees.

(f) The participating entity shall not enroll a person in the 24/7 Sobriety Program if any fees were waived without the consent of the Attorney General.

Section 2. Types of testing authorized to detect the presence of alcohol.

(a) A participant who has been ordered or directed to submit to alcohol testing shall do so through twice-daily breath tests on a device designed to detect the presence of alcohol in the test subject's breath.

(i) The device need not comply with the Wyoming Department of Health's Rules and Regulations for Chemical Analysis for Alcohol Testing.

(ii) A participant who has been ordered to provide twice-daily breath tests shall report to the participating entity's testing location at the times determined by the participating entity, and not less than ten (10) hours and not more than fourteen (14) hours between each test.

(b) As an alternative to (a) of this section, a participant may be ordered to submit to monitoring on a continuous remote transdermal alcohol monitoring device. This decision is solely within the discretion of the court or the Board of Parole. Factors to be considered in determining whether to use this device include whether:

(i) a device is available;

(ii) the participant is capable of paying the fees and costs associated with continuous remote transdermal alcohol monitoring;

(iii) the participant is capable of wearing the device; and

(iv) the participant does not qualify for twice-daily breath tests because of one or more of the following:

(A) the participant lives in a rural area and submitting to twice-daily breath tests would be unduly burdensome;

(B) the participant's employment requires job performance at a location remote from the testing location and submitting to twice-daily breath tests would be unduly burdensome; or

(C) the participant has violated the 24/7 Sobriety Program while submitting to twice-daily breath tests and poses a substantial risk of future violation.

Section 3. Types of testing authorized to detect the presence of a controlled substance.

(a) Except as provided in (b) of this section, a participant ordered to submit to drug testing shall do so through urine or saliva testing. The frequency of the urine or saliva testing shall be determined by the court or Board of Parole.

(b) As an alternative to (a) of this section, a participant may be ordered to use a drug patch designed to monitor the presence of a controlled substance. The use of this alternative is solely within the discretion of the court or Board of Parole. Factors to be considered in determining whether to use this device include whether:

(i) a patch is available;

(ii) the participant is capable of paying the fees and costs associated with the drug patch;

(iii) the participant is capable of wearing the drug patch; and

(iv) the participant does not qualify for urine or saliva testing because of one or more of the following:

(A) the participant lives in a rural area and submitting to urine or saliva testing would be unduly burdensome;

(B) the participant's employment requires job performance at a location remote from the testing location and submitting to urine or saliva testing would be unduly burdensome; or

(C) the participant has violated the 24/7 Sobriety Program while submitting to urine or saliva testing and poses a substantial risk of future violation.

Section 4. Testing procedures.

(a) A participating entity shall post hours of operation at the testing location.

(b) Prior to each test administered, the participating entity shall verify the participant's identity.

(c) The participating entity shall maintain a daily sign in record and each participant shall print and sign their names prior to submitting to testing.

(d) The participant shall pay the required testing fee prior to submitting to testing.

(e) A participating entity shall contemporaneously record all participant testing results using the reporting and data management system provided by the participating vendor.

(f) If a test indicates the presence of alcohol or a controlled substance, or if the participant fails to appear for testing, the participating entity shall immediately notify law enforcement.

Section 5. Testing fees.

(a) A participant submitting to twice-a-day breath testing shall pay a fee of two dollars (\$2) for each test.

(b) A participant submitting to urine testing shall pay a fee of ten dollars (\$10) for each test.

(c) A participant submitting to the use of a drug patch shall pay a fee of forty-five dollars (\$45) for each drug patch provided.

(d) A participant submitting to saliva testing shall pay a fee of ten dollars (\$10) for each test.

(e) A participant submitting to continuous remote transdermal alcohol monitoring shall pay a daily fee of ten dollars (\$10).

Section 6. Enrollment fees.

(a) The participant shall pay a fee of thirty dollars (\$30) each time the participant is enrolled in the 24/7 Sobriety Program.

(b) A participant submitting to continuous remote transdermal alcohol monitoring shall, in addition to the enrollment fee, pay the cost of the installation and removal of the device in accordance with the vendor agreements. The total cost of the installation and removal of the device shall not exceed one hundred dollars (\$100) and shall be due upon enrollment.

Section 7. Collection, distribution, and use of fees.

(a) A participant shall pay all fees directly to the participating entity.

- (b) All fees are non-refundable.
- (c) A participating entity shall remit all fees on the first of each month to the State Treasurer, through the Attorney General, to be credited to the 24/7 Sobriety Program account.
- (d) Upon request by the Attorney General, the State Auditor shall distribute a portion of the testing fees to the participating vendors in accordance with the vendor agreements.
- (e) After paying the participating vendors, the remainder of the testing and enrollment fee proceeds shall be divided in the following manner:
 - (i) Seventy-five percent (75%) shall be returned to the participating entity;
 - (ii) Twenty-five percent (25%) shall be retained by the State Treasurer in the 24/7 Sobriety Program account.
- (f) All fee proceeds shall be used only for the purposes of administering the 24/7 Sobriety Program.

Chapter 2

Enrollment, Testing and Fees

Section 1. Enrollment.

(a) A participating entity shall be provided with a copy of the order from a court or directive from the Board of Parole before enrolling a participant.

(b) A participant placed on the 24/7 Sobriety Program shall be enrolled by a representative of a participating entity as provided in the order or directive.

(c) The participating entity shall enter the participant's information into the reporting system provided by the participating vendor.

(d) The participant shall execute a participation agreement and provide written waivers to the participating entity to allow the release of program information for enforcement and reporting purposes. If the participant refuses to execute the agreement in full, the participant shall be denied participation in the program.

(e) The participating entity shall also provide the participant with information regarding any test ordered or directed, the applicable procedures, and the applicable fees.

(f) The participating entity shall not enroll a person in the 24/7 Sobriety Program if any fees were waived without the consent of the Attorney General.

Section 2. Types of testing authorized to detect the presence of alcohol.

(a) A participant who has been ordered or directed to submit to alcohol testing shall do so through twice-daily breath tests on a device designed to detect the presence of alcohol in the test subject's breath.

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(ii) A participant who has been ordered to provide twice-daily breath tests shall report to the participating entity's testing location at the times determined by the participating entity, and not less than ten (10) hours and not more than fourteen (14) hours between each test.

(b) As an alternative to (a) of this section, a participant may be ordered to submit to monitoring on a continuous remote transdermal alcohol monitoring device. This decision is solely within the discretion of the court or the Board of Parole. Factors to be considered in determining whether to use this device include whether:

(i) a device is available;

(ii) the participant is capable of paying the fees and costs associated with continuous remote transdermal alcohol monitoring;

(iii) the participant is capable of wearing the device; and

(iv) the participant does not qualify for twice-daily breath tests because of one or more of the following:

(A) the participant lives in a rural area and submitting to twice-daily breath tests would be unduly burdensome;

(B) the participant's employment requires job performance at a location remote from the testing location and submitting to twice-daily breath tests would be unduly burdensome; or

(C) the participant has violated the 24/7 Sobriety Program while submitting to twice-daily breath tests and poses a substantial risk of future violation.

Section 3. Types of testing authorized to detect the presence of a controlled substance.

(a) Except as provided in (b) of this section, a participant ordered to submit to drug testing shall do so through urine or saliva testing. The frequency of the urine or saliva testing shall be determined by the court or Board of Parole.

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(i) a patch is available;

(ii) the participant is capable of paying the fees and costs associated with the drug patch;

(iii) the participant is capable of wearing the drug patch; and

(iv) the participant does not qualify for urine or saliva testing because of one or more of the following:

(A) the participant lives in a rural area and submitting to urine or saliva testing would be unduly burdensome;

(B) the participant's employment requires job performance at a location remote from the testing location and submitting to urine or saliva testing would be unduly burdensome; or

(C) the participant has violated the 24/7 Sobriety Program while submitting to urine or saliva testing and poses a substantial risk of future violation.

Section 4. Testing procedures.

(a) A participating entity shall post hours of operation at the testing location.

(b) Prior to each test administered, the participating entity shall verify the participant's identity.

(c) The participating entity shall maintain a daily sign in record and each participant shall print and sign their names prior to submitting to testing.

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(b) A participant submitting to urine testing shall pay a fee of ten dollars (\$10) for each test.

(c) A participant submitting to the use of a drug patch shall pay a fee of forty-five dollars (~~\$450~~) for each drug patch provided.

(d) A participant submitting to saliva testing shall pay a fee of ten dollars (\$10) for each test.

(e) A participant submitting to continuous remote transdermal alcohol monitoring shall pay a daily fee of ten dollars (\$10).

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(a) The participant shall pay a fee of thirty dollars (\$30) each time the participant is enrolled in the 24/7 Sobriety Program.

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Section 7. Collection, distribution, and use of fees.

(a) A participant shall pay all fees directly to the participating entity.

(b) All fees are non-refundable.

(c) A participating entity shall remit all fees on the first of each month to the State Treasurer, through the Attorney General, to be credited to the 24/7 Sobriety Program account.

(d) Upon request by the Attorney General, the State Auditor shall distribute ~~one dollar (\$1) from the testing fees to a participating vendor~~ a portion of the testing fees to the participating vendors in accordance with the vendor agreements.

(e) After paying the participating vendors, the remainder of the testing and enrollment fee proceeds shall be divided in the following manner:

(i) Seventy-five percent (75%) shall be returned to the participating entity;

(ii) Twenty-five percent (25%) shall be retained by the State Treasurer in the 24/7 Sobriety Program account.

(f) All fee proceeds shall be used only for the purposes of administering the 24/7 Sobriety Program.