



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised July 2019

<u>1. General Information</u>			
a. Agency/Board Name*			
b. Agency/Board Address		c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address			
h. Date of Public Notice		i. Comment Period End Date	
j. Public Comment URL or Email Address:			
k. Program			
* <input type="checkbox"/> By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.			
<u>2. Legislative Enactment</u>			
For purposes of this Section 2, "new" only applies to regular non-emergency 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 non-emergency regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?			
<input type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):			
<u>3. Rule Type and Information</u>			
For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.			
a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. <i>Please use the "Additional Rule Information" form to identify additional rule chapters.</i>			
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 Repealed	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 Repealed	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 Repealed	

* If the name of a chapter of rules is changing, please provide the NEW chapter name in parenthesis following the OLD chapter name. *Example:* Old Chapter Name: General Provisions; New Chapter Name: General Provisions and Requirements. This would appear as "General Provisions (General Provisions and Requirements)."

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. The Agency has completed a takings assessment as required by W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

24/7 Sobriety Program

Statement of Principal Reasons

The Attorney General, under authority granted by Wyo. Stat. Ann. § 7-13-1705(a), proposes new and amended rules to continue to implement the 24/7 Sobriety Program created by Wyo. Stat. Ann. §§ 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 new and amended rules will expand alcohol testing options for the Program's participants. At present, alcohol testing is limited to "in-person twice-daily" breath testing and "continuous remote transdermal alcohol monitoring" (commonly known as an ankle monitoring bracelet). During the 2019 legislative session, the Wyoming Legislature added definitions to provide for "remote electronic alcohol monitoring" (currently already offered under the Program's rules as "continuous remote transdermal alcohol monitoring") and "remote breath testing" (not currently offered under the Program's rules). In response, the proposed rules incorporate the 2019 legislation by renaming "continuous remote transdermal alcohol monitoring" to "remote electronic alcohol monitoring," and by adding "remote breath testing" as an additional alcohol testing option under the Program. By adding "remote breath testing," the Office seeks to provide more flexibility to Program participants where traditional "in-person twice-daily" breath testing is determined to be unduly burdensome.

The proposed rule also sets a daily testing fee associated with remote breath testing, and lowers the existing daily testing fee for remote electronic alcohol monitoring, both of which will be four dollars (\$4) per day. Because the 24/7 Sobriety Program does not have funding to purchase equipment necessary for these types of remote alcohol testing, participants are required to contract with approved vendors to obtain the remote alcohol testing devices at their own expense. The Office seeks to set the daily testing fees at a level low enough to make remote alcohol testing affordable for those that are unable to submit to in-person twice-daily breath testing.

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) “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;

(ii) “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;

(iii) “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;

(iv) “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;

(v) “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.

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 in-person twice-daily breath tests on a device designed to detect the presence of alcohol in the test subject's breath. A participant who has been ordered to submit to in-person 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 either a remote electronic alcohol monitoring device, or a remote breath testing 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 these devices shall include whether:
 - (i) a device is available;
 - (ii) the participant is capable of paying the fees and costs associated with the device;
 - (iii) the participant is capable of using the device; and

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

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

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

(c) For the purposes of this section, the devices need not comply with the Wyoming Department of Health's Rules and Regulations for Chemical Analysis for Alcohol Testing.

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 in-person 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 remote electronic alcohol monitoring shall pay a daily fee of four dollars (\$4). In addition, the participant shall be responsible for paying the cost of obtaining the necessary remote electronic alcohol monitoring device directly to the vendor, as approved by the participating entity.

(f) A participant submitting to remote breath testing shall pay a daily fee of four dollars (\$4). In addition, the participant shall be responsible for paying the cost of obtaining the necessary remote breath testing device directly to the vendor, as approved by the participating entity.

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 either remote electronic alcohol monitoring or remote breath testing shall, in addition to the enrollment fee, pay the cost of the activation and deactivation of the device in accordance with the vendor agreements. The total cost of the activation and

deactivation 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 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;

~~(iii)~~ (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;

(iv) “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.

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 in-person twice-daily breath tests on a device designed to detect the presence of alcohol in the test subject's breath. A participant who has been ordered to submit to in-person 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.

~~(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 either a continuous remote transdermal electronic alcohol monitoring device, or a remote breath testing 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~~these devices shall 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~~the device;
- (iii) the participant is capable of ~~wearing~~using the device; and
- (iv) the participant does not qualify for in-person twice-daily breath tests because of one or more of the following:
 - (A) the participant lives in a rural area and submitting to in-person twice-daily breath tests would be unduly burdensome; or
 - (B) the participant's employment requires job performance at a location remote from the testing location and submitting to in-person 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.~~

(c) For the purposes of this section, the devices need not comply with the Wyoming Department of Health's Rules and Regulations for Chemical Analysis for Alcohol Testing.

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.

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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 (\$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~~ electronic alcohol monitoring shall pay a daily fee of ~~ten~~ four dollars (\$~~10~~4). In addition, the participant shall be responsible for paying the cost of obtaining the necessary remote electronic alcohol monitoring device directly to the vendor, as approved by the participating entity.
- (f) A participant submitting to remote breath testing shall pay a daily fee of four dollars (\$4). In addition, the participant shall be responsible for paying the cost of obtaining the necessary remote breath testing device directly to the vendor, as approved by the participating entity.

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 ~~either continuous remote transdermal~~ electronic alcohol monitoring or remote breath testing shall, in addition to the enrollment fee, pay the cost of the ~~installation~~ activation and ~~removal~~ deactivation of the device in accordance with the vendor agreements. The total cost of the ~~installation~~ activation and ~~removal~~ deactivation 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.