



## Certification Page Regular and Emergency Rules

Revised May 2014

**Emergency Rules** *(After completing all of Sections 1 and 2, proceed to Section 5 below)*

**Regular Rules**

<b>1. General Information</b>			
a. Agency/Board Name Wyoming Attorney General's Office			
b. Agency/Board Address 123 State Capitol	c. City Cheyenne	d. Zip Code 82002	
e. Name of Contact Person Michael T. Kahler	f. Contact Telephone Number 307-777-7196		
g. Contact Email Address mike.kahler@wyo.gov	h. Adoption Date January 21, 2015		
i. Program 24/7 Sobriety Program			
<b>2. Rule Type and Information:</b> For each chapter listed, indicate if the rule is New, Amended, or Repealed.			
If "New," provide the Enrolled Act numbers and years enacted: <b>Senate Enrolled Act 65, 2014</b>			
c. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed <i>(Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification)</i>			
Chapter Number: 1	Chapter Name: Rulemaking Authority and Definitions	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Chapter Number: 2	Chapter Name: Enrollment, Testing and Fees	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
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d. <input checked="" type="checkbox"/> The Statement of Reasons is attached to this certification.			
e. If applicable, describe the <b>emergency</b> which requires promulgation of these rules without providing notice or an opportunity for a public hearing:			

**3. State Government Notice of Intended Rulemaking**

a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the **Secretary of State:** November 4, 2014  
b. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Legislative Service Office:** November 4, 2014  
c. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Attorney General:** November 4, 2014

**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.  Yes  No  N/A  
b. A public hearing was held on the proposed rules.  Yes  No

If "Yes:"	Date:	Time:	City:	Location:

**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:** January 21, 2015  
b. Date on which final rules were sent to the **Legislative Service Office:** January 21, 2015  
c. Date on which a PDF of the final rules was electronically sent to the **Secretary of State:** January 21, 2015

**6. Agency/Board Certification**

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual <i>(Blue ink as per Rules on Rules, Section 7)</i>	
Printed Name of Signatory	Peter K. Michael
Signatory Title	Wyoming Attorney General
Date of Signature	January 21, 2015

**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	

**Attorney General:** 1. Statement of Reasons; 2. Original Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; and 5. Memo to Governor documenting emergency (for emergency rules only).

**LSO:** 1. Statement of Reasons; 2. Copy of Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; 5. Electronic copy of rules (PDFs) emailed to [Criss.Carlson@wyoleg.gov](mailto:Criss.Carlson@wyoleg.gov): clean and strike/underscore; and 6. Memo to Governor documenting emergency (for emergency rules only).

**SOS:** 1. PDF of clean copy of rules; and 2. Hard copy of Certification Page as delivered by the AG.



# *Office of the Attorney General*

**Governor**  
Matthew H. Mead

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John G. Knepper

**Attorney General**  
Peter K. Michael

**Division Deputy**  
Robin Sessions Cooley

January 21, 2015

## **Office of the Attorney General 24/7 Sobriety Program Amended Statement of Principal Reasons**

The Attorney General, under authority granted by Wyoming Statute § 7-13-1705(a), is adopting rules 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; and (iii) Establish a data management program to manage program data, including testing results, fees and required reports. The data management program shall be used by all counties taking part in the program.”

Wyo. Stat. Ann. § 7-13-1705(a).

To fulfill that mandate, the rules establish the manner in which participants shall enroll in the program.

The proposed rules initially considered four allowable testing methods and procedures, all of which are authorized by statute. Following public comment, three of the proposed testing methods were adopted in the final rule. A fourth testing method

considered, remote transdermal alcohol monitoring, was removed from the final rule. During the comment period, commenters suggested that the remote transdermal monitoring fees contemplated in the proposed rule, \$5 daily, were too low to provide for daily monitoring where the actual daily monitoring cost to the participant could range from \$10 to \$12 if the participating entity does not own a remote transdermal alcohol monitoring device and is required to lease the device. According to the comments, the proposed \$5 daily monitoring fee was based upon assumptions provided by states that purchased their own devices. Under the 24/7 Sobriety Program legislation, no funds were appropriated that would allow the purchase of monitoring devices. As a result, remote transdermal alcohol monitoring is not included in the adopted rule, and will be considered in a future amendment.

Following public comment, Chapter 2, Section 2(a)(ii) was also amended, adding the language “at the times determined by the participating entity” to properly allow the each participating entity the ability to manage its resources and testing times.

Next, the rules create a fee schedule for the three different types of tests. These fees are comparable to those in other states that have implemented similar programs and are not designed to generate profit in excess of the costs of the program.

The statute mandates that the fees will be collected by the sheriff and then transmitted to the State Treasurer and that those “fees shall be distributed as provided by this article and the rules.” Wyo. Stat. Ann. § 7-13-1706. The rules, therefore, provide that the State will be responsible for paying the participating vendor. The remaining testing fees will be divided between the state and the participating agencies to defray all costs.

Finally, the rules require the participating agency to use the provided data management system to keep track of related data and to submit that information to the Attorney General monthly.

## **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) “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 Wyoming Statute § 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

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## **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.

#### **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 testing. The frequency of the urine 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 testing because of one or more of the following:

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

(C) the participant has violated the 24/7 Sobriety Program while submitting to urine 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 dollars (\$40) for each drug patch provided.

Section 6. Enrollment fees.

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

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.

(e) After paying the participating vendors, the remainder of the testing 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.

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