

**Title 19—DEPARTMENT OF  
HEALTH AND SENIOR SERVICES  
Division 25—State Public Health Laboratory  
Chapter 30—Determination of Blood  
Alcohol by Blood, Breath, Saliva and  
Urine Analysis; and Determination for  
the Presence of Drugs in Blood, Saliva, and Urine**

**PROPOSED AMENDMENT**

**19 CSR 25-30.011 General Provisions for the Determination of Blood, Breath, Saliva, or Urine Analysis and Drug Testing.** The department is amending sections (1), (3) and (4).

*PURPOSE: This amendment updates the statutory references to those statutes that are now applicable, removes the address and expands the records that are available from the department.*

(1) Only those laboratories or persons performing analysis of blood, breath, saliva, or urine for the determination of blood alcohol content, or of blood, saliva, or urine for the presence of drugs—at the direction of a law enforcement officer acting under the provisions of sections **577.001-577.041** [577.020–577.041, RSMo, and sections 306.111–306.119], RSMo—are subject to the rules in this chapter.

(3) The chemical analysis of a person’s blood, breath, saliva, or urine conducted under the provisions of sections **577.001-577.041** [577.020–577.041, RSMo, and sections 306.111–306.119], RSMo, shall be performed by licensed medical personnel or by personnel possessing a valid permit issued by the department.

(4) Applications for permits and renewals of permits shall be made on forms [(see 19 CSR 25-30.021, 19 CSR 25-30.031, or 19 CSR 25-30.041)] available from the Breath Alcohol Program, **Missouri** State Public Health Laboratory [—Southeast Branch, 2875 James Boulevard, Poplar Bluff, MO 63901]. Forms are also available at <http://health.mo.gov/lab/breathalcohol/>. Requests for approval of instruments, methods, or training courses shall be made to the director, **Missouri** State Public Health Laboratory, c/o Breath Alcohol Program. **Requests for copies of permits, submitted maintenance records, submitted permit applications, and simulator certifications shall also be made to the director, Missouri State Public Health Laboratory, c/o Breath Alcohol Program.** Criteria and standards used for **certification and approval** purposes shall be provided upon request by the **Missouri** State Public Health Laboratory.

*AUTHORITY: section[s] 192.006 [and 577.026], RSMo 2000, and section[s] [306.114, 306.117,] 577.020, **RSMo 2017**, and **section** 577.037, RSMo [Supp. 2011] **2016**.\* This rule previously filed as 19 CSR 20-30.011. Original rule filed July 15, 1988, effective Sept. 29, 1988. Changed to 19 CSR 25-30.011 Jan. 1, 1995. Emergency amendment filed May 10, 2001, effective May 22, 2001, expired Nov. 17, 2001. Amended: Filed May 10, 2001, effective Oct. 30, 2001. Amended: Filed May 31, 2012, effective Dec. 30, 2012.*

*\*Original authority: 192.006, RSMo 1993, amended 1995; 306.114, RSMo 1993, amended 2004, 2005, 2008; 306.117, RSMo 1993, amended 2005, 2008; 577.020, RSMo 1977, amended 1982,*

1983, 1996, 1998, 2001, 2006; 577.026, RSMo 1982; and 577.037, RSMo 1982, amended 1983, 1988, 1993, 1996, 2001.

*Collins v. Director of Revenue*, 691 S.W.2d 246 (Mo. banc. 1985); *Jannett v. King*, 687 S.W.2d 252 (Mo. App. 1985); *Stuart v. Director of Revenue*, 761 S.W.2d 234 (Mo. App. 1988). *Prima facie* case for admission of breath analysis test results is made if the test is administered by a certified operator in accordance with promulgated operating procedures.

*Collins v. Director of Revenue*, 691 S.W.2d 246 (Mo. banc 1985); *Stuart v. Director of Revenue*, 761 S.W.2d 234 (Mo. App. 1988). A contention that a breath analysis instrument was not functioning properly can only be made if supported by some evidence which suggests that a malfunction occurred despite adherence to correct test methods.

*Williams v. Director of Revenue*, 721 S.W.2d 797 (Mo. App. 1986). The results of approved breath analysis tests are measured by weight.

*Daniels v. Director of Revenue*, 48 S.W.3d 42 (Mo. App. 2001), overruled on other grounds by *Verdoorn v. Director of Revenue*, 119 S.W.3d 543 (Mo. 2003). “Belching” does not constitute “vomiting” because stomach contents are not disgorged through the mouth.

*Misener v. Director of Revenue*, 134 S.W.3d 761 (Mo. App. 2004). Subject waived any defense based upon the breath test result being contaminated by an antacid tablet in his mouth because he did not respond truthfully when asked whether he was taking any medication.

**PUBLIC COST:** This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

**PRIVATE COST:** This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed amendment with Bill Whitmar, Director, Missouri Department of Health and Senior Services, Missouri State Public Health Laboratory, P.O. Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.