

ORDINANCE NO. 06-11

[Pertaining to the repealed and reenactment with amendments of Chapter 86 (Personnel), Part 1, Article I and Part 6, Articles I and II and the enactment of Part 6, Article III of the Code of Calvert County]

For the purpose of comprehensively amending Chapter 86, Part 1, Article I and Part 6, Articles I and II, of the Code of Calvert County.

And for the further purpose of enacting new Part 6, Article III of the Code of Calvert County.

By repealing and reenacting with amendments Chapter 86, Part 1, Article I and Part 6, Articles I and II, of the Code of Calvert County, and by enacting new Part 6, Article III of the Code of Calvert County. (2000 Edition and September, 2008 Supplement, as amended).

Pursuant to authority granted in Article 25, of the Annotated Code of Maryland, as may be amended from time to time, and following a duly advertised public hearing held on April 5, 2011.

Be it Ordained by the Board of County Commissioners of Calvert County, Maryland, that Chapter 86, Part 1, Article I and Part 6, Articles I and II, of the Code of Calvert County, **Be** and the same hereby **Are** repealed and reenacted with amendments as follows; and

Be it Further Ordained, by the Board of County Commissioners of Calvert County, Maryland, that Chapter 86, Part 6, Article III of the Code of Calvert County, **Be** and the same hereby **Is** enacted as follows:

**Part 1
Introduction**

**ARTICLE 1
Objectives, Authority and Scope**

§ 86-1-101. Objective.

The objective of this chapter is to establish for the Calvert County Board of County Commissioners a system of personnel administration governing the appointment, promotion, transfer, layoff, removal, discipline, and welfare of its employees; an employment contract is neither expressed nor implied by the contents of this chapter.

§ 86-1-102. Authority.

- A. Article 25, § 3 of the Annotated Code of Maryland authorizes the Board of County Commissioners to provide for the appointment and removal and to establish a merit system for all County officers and employees except those people whose appointment or election is provided for by the Constitution or public general or public local laws and to fix and prescribe the salary or compensation of all appointed officers and employees.
- B. The chapter does not limit the authority of the Board of County Commissioners to exercise prerogatives necessary to regulate the competent and efficient management and operation of Calvert County Government. These prerogatives shall include the authority to direct and assign the work of their employees, including but not limited to the authority to appoint, promote, transfer, and reassign. Such prerogative shall not be construed as an exclusive enumeration nor as a waiver of any not specifically enumerated above or elsewhere in this chapter, whether or not exercised prior to its effective date.

§ 86-1-103. Delegation of authority.

As part of the departmentalization of the County Government, the Board of County Commissioners of Calvert County hereby authorizes the delegation of its powers as it deems necessary to the Office of Personnel and various departments established hereunder. The Director of Personnel may delegate authority to departmental staff, and Department Heads and upon approval engage contractors to execute any responsibilities set forth herein.

§ 86-1-104. Scope.

- A. The scope of this chapter includes statements of policies and procedures that govern personnel administration for all employees compensated by the Board of County Commissioners who do not work under any other sovereign authority or body politic and corporate. This chapter does not contain all terms and conditions of employment and is not to be interpreted as a contract or as the full scope of the employment relationship.
- B. The following parts of this chapter shall apply to the Deputies of the Calvert County Sheriff: Part 2 Article IV Probationary Status § 86-2-401, § 86-2-402 and §86-2-403 A, C, D, Part 3 Article I Pay Plan and Adjustments § 86-3-101, § 86-3-102, § 86-3-103, § 86-3-104 A, B, C, F.1, § 86-3-106, Part 3 Article II Overtime and Compensatory Time Policy § 86-3-201, §86-3-202, § 86-3-203, § 86-3-204, § 86,3-205, § 86-3-208, § 86-3-209, § 86-3-210, Part 3 Article III Compensation, Part 3 Article VI Holiday Compensation, Part 4 Leave Administration, and Part 8

Performance Evaluation. Should any of these provisions stated be inconsistent with the Law Enforcement Officers Bill of Rights (LEOBR), that Bill of Rights shall govern.

§ 86-1-105. Amendment.

The Board of County Commissioners may, from time to time, amend, supplement, change, modify, or repeal any of these policies and procedures not inconsistent with the provisions of the Annotated Code of Maryland. Changes in job titles and classification, and changes in the authorized staffing level shall not be considered amendments to this chapter and need not be done by resolution of the Board of County Commissioners.

§ 86-1-106. Severability.

If any part of this document shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this document.

§ 86-1-107. Repeal of conflicting provisions.

All other documents, resolutions, or ordinances of the Board of County Commissioners that are in conflict with this one are hereby repealed to the extent of such a conflict.

§ 86-1-108. Distribution of Chapter 86 of the County Code.

Each Department and Division shall have a copy of this chapter. The Office of Personnel is required to make a copy available to each new employee. A reference copy shall be available in the Office of Personnel.

§ 86-1-109. Development of administrative procedures.

The Director of Personnel may establish procedures necessary to effectuate the provisions of this chapter and to comply with state and federal laws and regulations.

**Part 6
Substance Abuse**

**ARTICLE I
Drug-Free Workplace Policy**

§ 86-6-101. General statement.

- A. The use of illegal drugs and misuse of legal substances by a significant segment of the American workforce has major adverse effects on the welfare of all citizens

and results in billions of dollars of lost productivity each year. Because the safety of its employees and the delivery of services to its citizens are adversely affected by alcohol and substance abuse, the County cannot afford to ignore this critical problem.

- B. The County is committed to providing a healthy and safe work environment for all employees; to providing the best possible services to County citizens; to maintaining the public's confidence in its government's employees; and to protecting the County from the economic losses that can occur due to alcohol and drug abuse. There is no reason to believe that illegal drug use or substance abuse in the County's workforce is greater than in other workplaces in the private or public sectors. However, because of the nature of public service, the health and safety of County residents demand that the County take the actions necessary to eliminate substance abuse and illegal drugs from the workplace.
- C. While it is inappropriate for the County as an employer to intrude into the private lives of its employees, County employees are expected and required to be in a condition to perform their duties throughout the workday. The County also recognizes that its employees' off-the-job, as well as on-the-job, involvement with drugs and alcohol can have an impact on work productivity and on its ability to provide a work environment free from the effects of alcohol and drug abuse.

§ 86-6-102. Policy.

It is the policy of the Board of County Commissioners that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace. This policy applies to all County employees; however, the Drug-Free Workplace Act of 1988 created requirements for employees working on federal grants. Those additional requirements for grant employees are specified herein.

§ 86-6-103. Fitness for duty.

Employees are expected and required to report to work fit for duty and remain able to perform their job duties throughout the day. Employees who are impaired by the use of a substance or who are in possession of a controlled dangerous substance without a prescription, on the job, have the potential for interfering with their own, as well as their coworkers', safe and efficient job performance.

§ 86-6-104. Notification of conviction.

As a condition of employment, employees must:

- A. Notify their Supervisors, Department Heads, and the Director of Personnel of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- B. Abide by the above-stated policy and notification process.

§ 86-6-105. County responsibilities.

- A. If an employee violates this policy, any drug-related work rule, or commits any drug-related offense which would subject them to any disciplinary action, the County must take the appropriate personnel action against an employee up to and including termination. In addition, the employee may be required to satisfactorily participate in a drug or alcohol-abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
- B. If an employee who is convicted of a drug statute violation is engaged in the performance of a federal grant, the County must:
 - (1) Notify the granting agency within 10 workdays after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction; and
 - (2) Make a good faith effort to maintain a drug-free workplace.

ARTICLE II

Employee Substance Abuse Screening for United States Coast Guard and Federal Highway Administration Safety Sensitive Positions

§ 86-6-201. Persons subject to testing.

- A. All persons who are currently employed or tentatively selected for employment in the following positions shall be required to have urine drug screens and breath/saliva alcohol screens:
 - (1) United States Coast Guard (USCG) Safety Sensitive Positions:
 - (a) Waterborne Operations marine vessel crew members (captain, mate, etc.);
 - (b) Crew members defined: Engaged or employed on board a vessel owned in the United States that is required by law or regulation to

engage, employ, or be operated by an individual holding a license, certificate of registry or merchant mariners documents.

(2) Federal Highway Administration (FHWA) Safety-Sensitive Positions:

- (a) Persons operating a vehicle which has a gross combination weight rating (GCWR) of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds;
 - (b) Persons operating a vehicle which has a GVWR of 26,001 or more pounds;
 - (c) Persons operating a vehicle which is designed to transport 16 or more passengers, including the driver;
 - (d) Persons operating a vehicle which is of any size and is used in the transportation of hazardous materials requiring placards.
- B. Persons who hold a CDL and perform a function requiring a CDL and not already covered by a category above or immediate Supervisors of employees in the above listed positions who perform these functions.
- C. Volunteer workers may not be compelled to submit to testing, but they may agree to submit to testing to retain their position if requested by a County Supervisor.

§ 86-6-202. Purpose of employee drug screening.

- A. In addition to those outlined in § 86-6-101, the County is committed to complying with all applicable federal regulations concerning substance abuse including 49 CFR Part 40, Procedure for Transportation Workplace Drug and Alcohol Testing Programs; 46 CFR Part 4, Marine Casualties and Investigation; 46 CFR Part 5, Marine Investigation Regulations - Personnel Action; and 46 CFR Part 16, Chemical Testing; and 3 CFR Part 95, Operating a Vessel While Intoxicated; 49 CFR Parts 382 et al., Controlled Substances and Alcohol Use and Testing and 49 CFR Part 392, Driving of Commercial Motor Vehicles.
- B. The use of any drug, including alcohol, can interfere with the safe and efficient functioning of the Calvert County Government. Since the County goal is to provide a safe workplace and have employees function in the most effective manner, drug or alcohol abuse is a matter of County concern and shall be dealt with in an appropriate manner.
- C. Questions regarding the substance abuse screening policy should be referred to the Director of Personnel, 150 Main Street, Prince Frederick, Maryland 20678.

§ 86-6-203. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACCIDENT:

- A. FHWA -- An occurrence associated with the operation of a vehicle if, as a result an individual dies or the driver receives a citation under state or local law for a moving traffic violation arising from the accident.
- B. USCG -- An occurrence associated with the operation of a marine vessel, if as a result, an individual dies, an individual suffers bodily injury requiring medical treatment, property damage of \$5,000 or greater; and those described in 46CFR Part 4, Subsection 4.03-1 and 4.03-2.

AIR BLANK -- A reading by an evidential breath testing device (EBT) of ambient air containing no alcohol.

ALCOHOL -- The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

ALCOHOL BREATH TEST -- A breath specimen collected through the use of an EBT.

ALCOHOL CONCENTRATION -- Amount of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath test under this part.

ALCOHOL SALIVA TEST -- A saliva specimen collected through the use of an alcohol saliva device (ASD).

BREATH ALCOHOL TECHNICIAN (BAT) -- An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

COLLECTION SITE -- A place designated by the employer where individuals present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs and alcohol.

COMMERCIAL DRIVER'S LICENSE (CDL) -- A license required to drive a commercial motor vehicle.

COMMERCIAL MOTOR VEHICLE -- Those vehicles which have a GCWR of more than 26,001 pounds (inclusive of a towed unit) with a GVWR of more than

10,000 pounds, or are used in the transportation of hazardous materials in a quantity requiring "placarding."

CONFIRMATION TEST -- For alcohol testing, this means a second test, following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. For controlled substance testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screening test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

DRUG SCREENING TEST -- The laboratory analysis of a urine specimen collected in accordance with 49 CFR Part 40 and analyzed in a Department of Health and Human Services (DHHS) approved laboratory.

EVIDENTIAL BREATH TESTING DEVICE (EBT) -- An EBT is a breath testing device approved by the National Traffic Safety Administration that is capable of measuring an employee's alcohol concentrations.

MEDICAL REVIEW OFFICER (MRO) -- A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with the employee's medical history and any other relevant biomedical information.

SAFETY SENSITIVE FUNCTION -- Any of those functions performed by employees listed in § 86-6-201, Persons subject to testing, of this chapter.

SAFETY SENSITIVE POSITION -- Any employee who performs a sensitive safety function listed in § 86-6-201, Persons subject to testing, of this chapter.

SCREENING TEST TECHNICIAN (STT) -- A person who instructs and assists employees in the alcohol testing process and operates an ASD.

SUBSTANCE ABUSE -- The use and misuse of alcohol and/or an illegal drug.

SUBSTANCE ABUSE PROFESSIONAL (SAP) -- A Department of Transportation (DOT) licensed certified professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

§ 86-6-204. Statement of policy for affected employees.

- A. Disciplinary action. The illegal manufacture, use, sale, distribution, or possession of controlled dangerous substances (such as some narcotics or other drugs), or any substance which causes impairment (such as alcohol or some prescription drugs) while on County business or County property, is proper cause for administrative or disciplinary action up to and including termination of employment. Any County employee suspected of violating this policy may be requested to submit to a medical test to determine fitness for duty. Refusal to submit to a medical test is an act contrary to this policy and may subject an employee to disciplinary action.

- B. Required hours of compliance. Off-the-job alcohol or drug use may adversely affect an employee's job performance and could jeopardize the safety of other employees, the public, and property.
 - (1) For those employees in safety-sensitive positions, no alcohol may be consumed while available to perform a safety-sensitive function; four hours prior to being scheduled to perform a safety-sensitive function; while performing a safety-sensitive function; immediately after performing a safety-sensitive function; and up to eight hours following an accident or until the employee undergoes a post-accident test, whichever occurs first.

 - (2) A safety-sensitive employee is prohibited from the use of the defined drugs at any time on or off the job. An employee shall not report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any drugs, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability. This policy also applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Therefore, any employee suspected of reporting to work under the influence of alcohol, narcotics, or unprescribed drugs shall be subject to medical testing and disciplinary action up to and including termination.

- C. Prescription drugs. Employees undergoing medical treatment with a prescribed drug or controlled substance which may alter their physical or mental ability must report this fact to their Supervisor. The Supervisor shall determine whether the employee can continue his regular job, be reassigned to another job, or be placed on leave if there is no available job which the employee can safely perform.

- D. Notification.
 - (1) A safety sensitive employee shall report the following:
 - (a) the receipt of any on or off the job citation alleging a violation of Section 21-902 of the Transportation Article of the Annotated Code of

- Maryland, as amended from time to time (driving while under the influence or impaired by drugs and/or alcohol);
- (b) a disposition of Probation Before Judgment for any alleged violation of Section 21-902 of the Transportation Article of the Annotated Code of Maryland, as amended from time to time (driving while under the influence or impaired by drugs and/or alcohol);
 - (c) the receipt of any on or off the job citation alleging a moving traffic violation;
 - (d) a notice of intended suspension or revocation of the employee's driver's license;
 - (e) the receipt of any on or off the job citation alleging a failure to submit to a chemical test as required by Section 16-205.1 of the Transportation Article of the Annotated Code of Maryland, as amended from time to time.
 - (f) the failure of the employee to submit to random drug or alcohol testing as permitted by this chapter;
 - (g) any positive results for drug and/or alcohol tests administered on the employee.
- (2) The notification required by paragraph (1) above shall be given by the employee to the employee's supervisor, department head, and Director of Personnel.
 - (3) The notification shall be given within five (5) days after the failure to submit to a drug and/or alcohol test or of the employee's receipt of the test results, citation, notice, or disposition.
 - (4) Failure to comply with the requirements of this Paragraph D may subject the employee to disciplinary action.
- E. Off-the-job convictions. Employees who are convicted for off-the-job alcohol or drug activity may be considered in violation of this policy. In deciding what action to take, Supervisors shall take into consideration the nature of the conviction, the relationship of the offense to the employee's job responsibilities; the employee's record with the County, and other factors relative to the impact of the employee's conviction upon the conduct of County business. Employees who are arrested for off-the-job alcohol or drug activity may be reassigned or suspended without pay in appropriate cases pending disposition of the criminal prosecution.

- F. Other workers. Volunteer workers who violate this policy are subject to dismissal. Vendors and contract employees who violate this policy while on County property shall not be permitted to conduct business with the County.

§ 86-6-205. Training program for affected employees.

- A. Employee training. Employees shall be provided with substance abuse education and training which shall include:
- (1) Display and distribution of informational material;
 - (2) A community service hot-line for employee assistance;
 - (3) Notice of the County's substance abuse policy;
 - (4) Information on the effects and consequences of drug use on personal health, safety, and the work environment; and
 - (5) Training on the behavioral cues and manifestations of drug use and abuse.
- B. Supervisory training. Supervisors shall be provided with substance abuse education and training which shall include:
- (1) Responsibility of the Supervisor as related to the drug and alcohol program;
 - (2) Indicators of probable alcohol misuse or prohibited drug misuse;
 - (3) Reasonable suspicion determination;
 - (4) Conflict resolution and resources available to the Supervisor.
- C. The County believes employees must adhere to strict standards of conduct on and off the job to meet its goal of providing a safe work environment and to continue to fulfill its responsibility to provide efficient and reliable services to its citizens.

§ 86-6-206. Circumstances of testing.

Six drug screening situations shall be utilized by Calvert County:

- A. Pre-employment screening. A description of the pre-employment drug screen process shall be included with the conditional offer of employment letter for positions listed in § 86-6-201. For purposes of this subsection, "applicant"

includes current County employees not presently holding but applying for a position covered by this subsection.

- (1) Urine drug screen. Once an applicant has been tentatively selected for employment, the applicant shall be scheduled for a collection of a urine sample for drug screening. If an applicant refuses to be tested, the applicant shall be rejected for employment.
- (2) Alcohol breath testing/alcohol saliva testing shall only be conducted if allowed by law and at the discretion of the County.

B. Post-accident testing.

- (1) In the event of an accident involving a marine vessel, any employee who performed a safety-sensitive function that contributed to the accident, or that cannot be completely discounted as contributing to the accident, shall be given a drug test. Accidents which require testing shall include fatal accidents, injury accidents requiring medical treatment, accidents with property damage presumed greater than \$5,000, and those described in 46 CFR Part 4, Subsection 4.03-1 and 4.03-2 (which includes discharge of oil or hazardous substance). "Fatal accidents" means accidents which lead to the death of a human being within 24 hours. Employees to be tested under this subsection shall be required to give a blood and/or urine sample as soon as practicable following the accident.
- (2) In the event of an accident involving a commercial motor vehicle (under FHWA guidelines), alcohol and controlled substance testing shall be conducted if any one of the following conditions is met: A fatality has occurred within 32 hours of the accident; a citation was received within 32 hours of the accident by the driver and an injury occurred requiring medical treatment away from the scene of the accident or either vehicle required towing from the scene of the accident.
 - (a) Post accident collections and testing for either drugs or alcohol by law enforcement agents are permitted by the DOT to be used by the County as the required post accident tests even though the tests are not completed per DOT requirements. If either test is not completed by enforcement agents, the DOT test is still required. The employee must notify the County if any tests were performed by law enforcement personnel.
- (3) In the event of an accident involving any employee who performed a safety-sensitive function that contributed to the accident, or that cannot be completely discounted as contributing to the accident, shall be tested for

drugs and alcohol. Whenever there is loss of life, each surviving safety-sensitive employee on duty in the vehicle at the time of the accident must be tested. Following non-fatal accidents, each safety sensitive employee on duty in the vehicle at the time of the accident shall be tested if one or more individuals receive injuries requiring immediate transport to a medical treatment facility or anytime one or more vehicles receives disabling damage, as well as those employees in any other safety sensitive position whose performance could have contributed to the accident.

- (a) After an accident has occurred, the County not law enforcement or hospital personnel must test affected employees for the use of drugs or alcohol; the County may not use the results of laboratory findings of a drug or alcohol test administered by police or hospital personnel. The County may not waive its obligation to test the employee after an accident.
 - (b) Employees to be tested under this subsection shall be required to give a urine sample for drug tests as soon as practicable following the accident and no more than 32 hours after the accident. Alcohol tests should be administered within two hours following the accident, and given no longer than eight hours after the accident.
- C. Reasonable cause. In the event of reasonable cause an employee shall be directed to provide a urine specimen for testing for presence of drugs, or an alcohol breath or saliva test for those employees in a safety-sensitive position. "Reasonable cause" means that the County while acting through its supervisory personnel reasonably believes that the appearance, conduct, or performance of the employee is indicative of being under the influence of a suspect substance. The questioned conduct must be witnessed and documented in writing by at least two employees, at least one of whom is in a supervisory capacity. Supervisory employees shall attend additional substance abuse educational sessions to aid in the detection of abuse and assistance with abusers.
- D. Random testing.
- (1) From time to time a certain number of employees listed in § 86-6-201, Persons subject to testing, Subsection A(1), USCG Safety Sensitive Positions, of this chapter shall be selected on a random basis and shall be directed to provide a urine sample for testing to ascertain whether the employee has engaged in drug use prohibited by this policy. Random tests shall be conducted in accordance with procedures established in 46 CFR Part 16, Subsection 16.230.

- (2) From time to time a certain number of employees listed in § 86-6-201, Persons subject to testing, Subsection A(2), of this chapter shall be selected on a random basis and shall be directed to provide a urine sample for testing to ascertain whether the employee has engaged in drug use prohibited by this policy and/or shall be required to take an alcohol breath or saliva test. Random tests shall be conducted in accordance with established procedures in 49 CFR, Parts 382.305.
- E. Return to duty. Any employee who either refuses to take a drug test, or fails such test, shall be prohibited from returning to duty until he passes such test and is certified as fit to resume duty. Those employees in safety-sensitive positions listed in § 86-6-201, Persons subject to testing, Subsection A(2) , of this chapter must also submit to an alcohol breath or saliva test. An employee with a positive alcohol breath test result (0.04 or greater) shall be prohibited from returning to duty. Results of 0.02 or greater but less than 0.04 shall not be allowed to perform safety sensitive functions for 24 hours. The County shall designate a physician to be a MRO who shall, among other duties, so certify the employee if appropriate.
- F. Follow-up testing. Any employee, once returned to duty, may be administered an unannounced blood and/or urine test and/or alcohol breath and/or alcohol or saliva test for a minimum of six follow up tests within 12 months, but may not continue testing for more than 60 months after his return to duty.

§ 86-6-207. Notice of testing policy.

All affected employees shall be given a copy of this policy. All applicants for employment in an affected position shall be advised of this policy in job announcements and at any pre-employment interviews. Affected volunteer workers shall be given a copy of this policy at the time of hire.

§ 86-6-208. Substances to be included in screen.

Alcohol (ethanol), Amphetamines (racemic amphetamines, dextroamphetamine, and methamphetamine), Cocaine, Marijuana (cannabinoids), Opiates (narcotics such as heroin, morphine, codeine, and other medicinal narcotics), Phencyclidine (PCP), and their metabolites shall be included in the employee drug screen. The County is concerned about the abuse of prescribed and over-the-counter medications as well as illegal drugs and alcohol. Substances not included in the above list may also be included in the screen.

§ 86-6-209. Testing procedures.

- A. Collection. Upon notification, the employee shall be required to proceed to the assigned collection site without delay and with appropriate identification.
- (1) The urine specimens shall be collected in a manner that optimizes confidentiality. A strict chain of possession shall be maintained on the specimen. Any medications taken within 96 hours of specimen collection should be noted by all individuals tested, along with the prescribing physician. Testing shall be in compliance with 49 CFR, Part 40.
 - (2) The alcohol specimens collection shall be conducted in a secured site with no unauthorized access at any time the EBT or ASD is unsecured or when testing is occurring. The BAT or STT must conduct only one test at a time and must not leave the testing site while preparations for testing or the test itself are in progress. Testing shall be in compliance with 49 CFR, Part 40.
- B. Altered sample. If there is evidence of possible specimen dilution, alteration, or tampering, an additional sample may be required. The second sample shall be collected under direct observation. All specimens shall be submitted for testing to a laboratory certified by the United States Department of Human Health and Services and that either holds a permit under Subtitle 2 (Medical Laboratories) of Title 17 of the Health-General Article, Annotated Code of Maryland, or else is certified or otherwise approved by the Maryland Department of Health and Mental Hygiene. At the request of the specimen provider at the time the sample is taken, the name and address of the laboratory that shall test the specimen shall be provided. All test results shall be reviewed by the MRO, who shall report the results to the Director of Personnel.
- C. Reasonable cause sample. Employees who are tested due to reasonable cause in accordance with § 86-6-206, may be placed on leave with pay, pending receipt of test results. If there is concern about individuals being under the influence of a suspect substance, they shall be provided transportation to and from the collection site and their residence, if necessary.
- D. Split sample specimen. The urine sample must be split and poured into two specimen bottles. This provides the employee with the option of having analysis of the split sample performed at a separate laboratory should the primary specimen test result be verified positive. The employee has 72 hours after being informed by the MRO of a verified positive test to request a test of the split sample. The employee is responsible for paying the cost of the split sample test.

§ 86-6-210. Positive test results.**A. Definition.**

- (1) If a positive drug screen test is reported from the MRO, it is understood that the first screening test was positive and a second confirmatory test based on a different scientific principle was also positive.
- (2) The MRO may verify a test as positive without having communicated directly with the employee about the test if the employee expressly declines the opportunity to discuss the test; neither the MRO nor the designated employer representative, after making all reasonable efforts, has been able to contact the employee within 14 days of the date on which the MRO receives the confirmed positive drug test result from the laboratory; or the employee, after being notified, fails to contact the MRO within five days.
- (3) If a positive alcohol breath or saliva test is reported from the BAT or STT, it is understood that the first screening test shows an alcohol concentration of 0.02 or greater, and a confirmation test verifies this. A positive alcohol breath test confirmation is an alcohol concentration of 0.04 or greater. Under FHWA regulations, an employee with an alcohol concentration of 0.02 or greater but less than 0.04 shall not be allowed to perform safety-sensitive functions for 24 hours.

B. Pre-employment. Pre-employment applicants with a positive screen shall be notified that they shall not be selected for the position.

C. Refusal to submit. Refusal to submit to a test is prohibited and is considered equivalent to a positive test result for that test. Behavior that constitutes this includes:

- (1) Direct refusal to take a drug or alcohol test;
- (2) Failure to provide sufficient quantity of urine with the time limit under the current regulations, or the failure to provide sufficient quantities of breath or other fluids without a valid medical explanation;
- (3) Tampering with or attempting to adulterate the specimen;
- (4) Engaging in conduct that obstructs the testing process;
- (5) Failure to notify the employer that the employee is in a post accident situation requiring testing or not being immediately available for post accident testing without a valid reason; or

(4) Whether the employee has tested positive after having previously completed a treatment or rehabilitation program for substance abusers.

G. Any safety-sensitive employee who has a verified positive drug test result, an alcohol concentration of 0.04 or greater, or refuses to submit to a test must also be evaluated by a substance abuse professional.

§ 86-6-211. Compliance with policy as condition of employment.

Compliance with the County's substance abuse policy is a condition of employment. Employees shall be required to sign an acknowledgment that they are familiar with this policy. Applicants that refuse to consent to this policy shall not be considered for employment.

§ 86-6-212. Voluntary rehabilitation.

A. In an effort to meet the purpose of this substance abuse policy, the County wants to provide a program that shall be helpful to employees who would like to end their substance abuse but who have not yet tested positive in a drug or alcohol screen. The County shall not take adverse action against an employee for voluntarily requesting assistance in dealing with a personal substance abuse problem. The employee may request leave to participate in a rehabilitation program or other treatment. Assistance in contacting an approved rehabilitation or treatment program shall be provided by the appropriate agency. At the conclusion of treatment, arrangements for drug and alcohol screening follow-up shall be made.

B. However, the employee shall be required to stop his substance abuse or else be subject to disciplinary action for failure to fulfill his duties upon return to his job, and voluntary participation in treatment programs may not prevent disciplinary action for violations of work rules that have already occurred.

§ 86-6-213. Changes or modifications.

DOT regulations change from time to time and the County reserves the right to change the provisions of this policy and testing program in the future to implement the new requirements as they become effective. All personnel shall be notified at least 30 days prior to instituting any changes.

ARTICLE III

Substance Abuse Program for employees of Transit Systems, Department of Transportation (DOT), Federal Transit Administration (FTA) in accordance with 49 CFR Part 655 and Part 40, as amended from time to time.

§ 86-6-301. General Statement.

Any provisions set forth in this policy that are included under the sole authority of the County and are not provided under the authority of the above named federal regulations are *italicized* indicating it is a requirement of Calvert County Government for employment, and not required by the DOT. Any tests performed outside DOT authority shall not use DOT forms or procedures. Language not italicized is required by FTA.

§ 86-6-302. Persons subject to testing.

- A. All persons who are currently employed or tentatively selected for employment in the following positions shall be required to have urine drug screens and breath/saliva alcohol screens pursuant to policies and procedures adopted by the Office of Personnel to ensure compliance with FTA as found in the Substance Abuse Testing Procedure Manual:
 - (1) Employees or contractors who operate a revenue service vehicle for any purpose, whether or not the vehicle is in service;
 - (2) Employees or contractors who operate a non-revenue service vehicle when it is required to be operated by a holder of a CDL, regardless of the type of vehicle being operated;
 - (3) Employees or contractors responsible for controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service;
 - (4) Employees or contractors responsible for maintenance of revenue service vehicles, including such acts as repairs, upkeep, or any other process which keeps the vehicle operational. This does not include cleaning the interior or exterior of the vehicle or transit facility. Employees of a contractor or other entity who maintains revenue service vehicles for Section 5311 recipients are specifically excluded from this category.
- B. Job titles and class specifications for these positions are listed in the Substance Abuse Testing Procedure Manual.

§ 86-6-303. Purpose of employee drug screening.

- A. In addition to regulations outlined in § 86-6-101, the County is committed to complying with all applicable federal regulations concerning substance abuse including 49 CFR Parts 655 and 40, as amended.

- B. The use of any drug, including alcohol, can interfere with the safe and efficient functioning of the Calvert County Government. Since the County goal is to provide a safe workplace and have employees function in the most effective manner, drug or alcohol abuse is a matter of County concern and shall be dealt with in an appropriate manner.
- C. Questions regarding the substance abuse screening policy should be referred to the Director of Personnel, 150 Main Street, Prince Frederick, Maryland 20678.

§ 86-6-304. Statement of Policy for affected employees.

- A. Disciplinary action. A safety sensitive employee that refuses to cooperate with this article shall be immediately removed from performing safety sensitive work, and be subject to disciplinary action.
- B. Consistent with the Drug-Free Workplace Act of 1988, it is illegal to manufacture, use, sell, distribute, or possess controlled dangerous substances in the workplace and would be a violation of this article and proper cause for administrative or disciplinary action up to and including termination of employment.
- C. A County employee reasonably suspected of violating procedures outlined in the Substance Abuse Testing Procedure Manual may be requested to submit to a medical test to determine fitness for duty. Refusal to submit to a medical test is an act contrary to this policy and may subject an employee to disciplinary action.
- D. Required hours of compliance. Off-the-job alcohol or drug use may adversely affect an employee's job performance and could jeopardize the safety of other employees, the public, and property.
 - (1) For those employees in safety-sensitive positions or on-call to perform safety sensitive functions, no alcohol or alcohol containing substance may be consumed while the employee is available to perform a safety-sensitive function; four hours prior to being scheduled to perform a safety-sensitive function; while performing a safety-sensitive function; immediately after performing a safety-sensitive function; and up to eight hours following an accident or until the employee undergoes a post-accident test, whichever occurs first. Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.
 - (2) A safety-sensitive employee is prohibited from the use of prohibited drugs at any time on or off the job although testing shall only be conducted while on-duty. An employee shall not report for duty or remain on duty requiring the

- (g) any positive results for drug and/or alcohol tests administered on the employee.
 - (2) The notification required by paragraph (F.1) above shall be given by the employee to the employee's supervisor, department head, and Director of Personnel.
 - (3) The notification shall be given within five days after the failure to submit to a drug and/or alcohol test or of the employee's receipt of the test results, citation, notice, or disposition.
 - (4) Failure to comply with the requirements of this section may subject the employee to disciplinary action.
- G. Employees who are convicted of off-the-job alcohol or drug activity may be considered in violation of this policy. In deciding what action to take, supervisors shall take into consideration the nature of the conviction, the relationship of the offense to the employee's job responsibilities, the employee's record with the County, and other factors relative to the impact of the employee's conviction upon the conduct of County business. Employees who are arrested for off-the-job alcohol or drug activity may be reassigned or suspended without pay in appropriate cases pending disposition of the criminal prosecution.
- H. Volunteer workers who violate this policy shall no longer be allowed to volunteer. Vendors and contract employees who violate this policy while on County property shall not be permitted to conduct business with the County.

§ 86-6-305. Implementation and Training.

- A. The Director of Personnel is the primary Designated Employer Representative (DER) for implementation of this article and has the responsibility to promulgate regulations and procedures to ensure that the program is in compliance with 49 CFR Parts 655 and 40, as amended.
- B. Test administration.
 - (1) Drug and Alcohol Testing Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and randomly as defined in this manual. All covered employees who have voluntarily sought assistance for problems with drugs or alcohol will be tested prior to returning to duty after completion of the SAP's recommended treatment program and subsequent release to duty. Follow-up testing will be conducted for a period of one to

five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the SAP.

- (2) Under FTA authority, a drug test can be performed any time a covered employee is on duty, and an alcohol test can be performed just before, during, or after the performance of a safety-sensitive function.
- (3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of on-going employment with Calvert County Government. Any safety sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in policy. Any covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee's removal from duty and discipline as outlined in policy.

C. Pre-Employment Testing Procedures.

- (1) All offers of employment for covered positions shall be extended conditionally upon the applicant passing a pre-employment drug test. An applicant shall not be hired into a covered position unless the applicant takes a drug test and receives a verified negative result.
- (2) A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test and receives a verified negative result. If the employee, that is being considered for placement, transfer or promotion into a covered position receives a verified positive drug test result, the employee shall be subject to discipline as outlined in this chapter.
- (3) If an applicant fails or refuses a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure or refusal of a pre-employment drug test shall disqualify an applicant for employment until documentation has been received evidencing that they have successfully completed an SAP referral, evaluation, and treatment plan and a negative pre-employment drug test has been conducted.
- (4) When a covered employee is on extended leave for a period of 90 days or more, regardless of the reason, the employee shall be required to take a pre-employment drug test under 49 CFR Part 655, as amended, and receive a negative test result prior to performing safety sensitive functions.

§ 86-6-306. Compliance with policy as condition of employment.

Compliance with the County's substance abuse policy is a condition of employment. Employees shall be required to sign an acknowledgment that they are familiar with this policy. Applicants that refuse to consent to this policy shall not be considered for employment.

§ 86-6-307. Voluntary rehabilitation.

- A. In an effort to meet the purpose of this substance abuse policy, the County provides a program that shall be helpful to employees who would like to end their substance abuse but who have not yet tested positive in a drug or alcohol screen. The County shall not take adverse action against an employee for voluntarily requesting assistance in dealing with a personal substance abuse problem. The employee may request leave to participate in a rehabilitation program or other treatment. Assistance in contacting an approved rehabilitation or treatment program shall be provided by the appropriate agency. At the conclusion of treatment, arrangements for drug and alcohol screening follow-up shall be made.
- B. An employee shall be required to stop the substance abuse or else be subject to disciplinary action. Voluntary participation in treatment programs may not prevent disciplinary action for violations of work rules that have already occurred.

§ 86-6-308. Changes or modifications.

DOT regulations change from time to time, and the County reserves the right to change the provisions of these policies and procedures relative to this testing program in the future to implement the new requirements as they become effective. All personnel shall be notified at least 30 days prior to instituting any changes.

§ 86-6-309. Proper Application of the Policy.

Calvert County Government is dedicated to ensuring fair and equitable application of this substance abuse policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

§ 86-6-310. Information Disclosure.

Drug and alcohol testing records shall be maintained by the DER and, except as provided by law or as necessary for safety and disciplinary action, the results of any

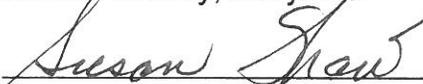
drug or alcohol test shall not be disclosed without express written consent of the tested employee.

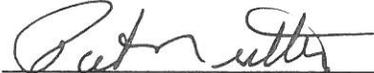
Done, this 5 day of April, 2011, by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Attest:

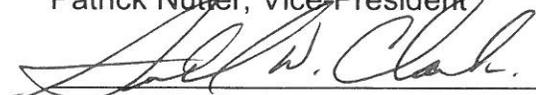
Board of County Commissioners of Calvert County, Maryland

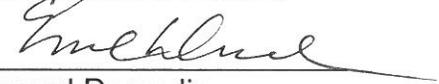

Corinne J. Cook, Clerk


Susan Shaw, President


Patrick Nutter, Vice-President

Approved for legal sufficiency on April 7, 2011


Gerald W. Clark

by 
Emanuel Demedis
County Attorney


Evan K. Slaughenhaupt, Jr.


Steven R. Weems

Received for Record: April 6 2011
at 11:40 o'clock A M. Same day
entered in Liber KPS No. 36
139 COUNTY COMMISSIONERS
ORDINANCES AND RESOLUTION.

