

**PERTAINING TO THE AMENDMENT OF CHAPTER 86 OF
THE CODE OF PUBLIC LOCAL LAWS OF CALVERT COUNTY**

WHEREAS, *Local Government Article*, Section 12-103 of the Maryland Annotated Code, as amended, authorizes and empowers the Board of County Commissioners of Calvert County, Maryland (hereinafter, the “Board of County Commissioners”) to establish a merit system in connection with the appointment of all county officials and employees not elected or appointed under the Constitution or public general laws of the State;

WHEREAS, by Ordinance 42-09, the Board of County Commissioners did adopt such a merit system, which is codified at Title 86 of the Code of Public Local Laws of Calvert County, Maryland, being Title 86 of *Article 5* of the Code of Public Laws of Maryland (hereinafter, the “Code”), the Annual Budget and Appropriation Act each year;

WHEREAS, the Office of Personnel has recommended that the Board of County Commissioners adopt certain amendments to Chapter 86 of the Code, more specifically set forth below;

WHEREAS, a public hearing regarding the certain amendment of Chapter 86 of the Code was duly advertised for two consecutive weeks before the public hearing held on June 3, 2014, at which time the Board of County Commissioners received public comment; and

WHEREAS, upon due consideration of the comments of the public and staff, the Board of County Commissioners finds it is in the best interest of the public health, safety and welfare of the citizens of Calvert County, Maryland to adopt those amendments to Chapter 86 of the Code set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Calvert County, Maryland hereby approves and enacts the following amendments to Chapter 86 of the Code:

1. Section 86-1-301 of the Code shall be amended by appending the following definitions, in the locations each would occur alphabetically, within section 86-1-301:

CONTROLLED DANGEROUS SUBSTANCES – Substances controlled by federal or state government. Federal Drug Enforcement Administration list of controlled substances can be found in Title 21 CFR Part 1300. Maryland information can be found in Criminal Law Article Section 5-101.

MEDICAL REVIEW OFFICER – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the 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 result, together with their medical history, and any other relevant biomedical information.

2. Part 6, Articles II, III, and IV of Chapter 86 of the Code shall be amended by repealing them in their entirety and adopted in their place the following:

ARTICLE II

Substance Abuse Program for positions covered by the Federal Highway Administration (hereinafter, "FHWA") in accordance with 49 CFR Part 40, Procedure for Transportation Workplace Drug and Alcohol Testing Programs; and 49 CFR Parts 382, et al., Controlled Substances and Alcohol Use and Testing and 49 CFR Part 392, Driving of Commercial Motor Vehicles, as Amended from Time to Time

§ 86-6-201. 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 Department of Transportation (hereinafter, "DOT"). Any tests performed outside DOT authority shall not use DOT forms. Language not italicized is required by FHWA.

§ 86-6-202. Persons subject to testing.

- A. All persons who continue employment after the provisions of this Article II are effective or hereafter, tentatively selected for employment performing the following FHWA Safety Sensitive Functions (hereinafter, "Safety Sensitive Functions"), and occupy FHWA Safety Sensitive Positions (hereinafter, "Safety Sensitive Positions"), are referred to in this Article as "Safety Sensitive Employees" and shall be required to have urine drug tests and breath/saliva alcohol tests pursuant to policies and procedures adopted by the Office of Personnel to ensure compliance with FHWA as found in the Substance Abuse Testing Procedure Manual for Employees with Commercial Driver's Licenses under Federal Highway Policy:
- (1) Operating a vehicle which has a gross combination weight rating (hereinafter, "GCWR") of 26,001 or more pounds inclusive of a towed unit with a GVWR of more than 10,000 pounds;
 - (2) Operating a vehicle which has a GVWR of 26,001 or more pounds;
 - (3) Operating a vehicle which is of any size and is used in the transportation of hazardous materials requiring placards.
- B. Job titles and class specifications for the Safety Sensitive Positions are listed in the Substance Abuse Testing Procedure Manual for Employees with Commercial Driver's License under the Federal Highway Policy.

§ 86-6-203. Purpose of Safety Sensitive Employee drug testing.

- 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, without limitation, 49 CFR Part 40, Procedure for Transportation Workplace Drug and Alcohol Testing Programs; and 49 CFR Parts 382 et al., Controlled Substances and Alcohol Use and Testing and 49 CFR Part 392, *Driving of Commercial Motor Vehicles, 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 Safety Sensitive Employees function in the most efficient 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 testing policy shall be referred to the Director of Personnel, 150 Main Street, Prince Frederick, Maryland 20678.

§ 86-6-204. Statement of policy for affected Safety Sensitive Employees.

- A. Disciplinary action. A Safety Sensitive Employee that refuses to cooperate with this Article shall be immediately removed from performing Safety Sensitive Functions, and shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- 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, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- C. A County Safety Sensitive Employee reasonably suspected of violating procedures outlined in the Substance Abuse Manual for Employees with Commercial Driver's Licenses under the Federal Highway 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 shall subject a Safety Sensitive Employee to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- D. Required hours of compliance. Off-the-job alcohol or drug use may adversely affect a Safety Sensitive Employee's job performance and could jeopardize the safety of other employees, the public, and property.

- (1) For those Safety Sensitive Employees on-duty or on-call to perform Safety Sensitive Functions, no alcohol or alcohol containing substance may be consumed four (4) 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 (8) hours following an accident or until the Safety Sensitive Employee undergoes a post-accident test, whichever occurs first. Each Safety Sensitive 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 controlled dangerous substances at any time on or off-the-job although testing shall only be conducted while on-duty. A Safety Sensitive Employee shall not report for duty or remain on-duty requiring the performance of Safety Sensitive Functions when the Safety Sensitive Employee uses any drugs, except when the use is pursuant to the instructions of a physician who has advised the Safety Sensitive Employee that the substance does not adversely affect the Safety Sensitive Employee's ability to perform Safety Sensitive Functions. This policy also applies to off-site lunch periods or breaks when the Safety Sensitive Employee is scheduled to return to work.
- E. *Prescription drugs. Safety Sensitive 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 require doctor's certification that the Safety Sensitive Employee can continue his regular job, be reassigned to another non-Safety Sensitive Function, or be placed on leave if there is no available job which the employee can safely perform.*
- F. Notification.
- (1) A Safety Sensitive Employee shall report the following:
 - (a) *receipt of any citation, regardless when cited, 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) *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) *receipt of any citation alleging a moving traffic violation, regardless when cited;*
 - (d) *notice of intended or actual suspension or revocation of the Safety Sensitive Employee's driver's license;*
 - (e) *receipt of any citation alleging a failure to submit to a test as required by Section 16-205.1 of the Transportation Article of the Annotated Code of Maryland, as amended from time to time, regardless when cited.*
 - (f) *failure of the Safety Sensitive Employee to submit to random drug or alcohol testing as prescribed by this Chapter;*
 - (g) *any positive results for drug and/or alcohol tests administered on the Safety Sensitive Employee; and*
 - (h) *any of the above actions occurring in other states must be reported as if the event occurred in Maryland.*
- (2) *The notification required by Paragraph (F.(1)) above shall be given in writing by the Safety Sensitive Employee to the Safety Sensitive Employee's supervisor, department head, and Director of Personnel.*
 - (3) *The notification of failure to submit to testing as prescribed by Paragraph F.1(f) above or of positive test result by Paragraph F.1(g) above shall be given within five (5) days after the failure to submit to a drug and/or alcohol test or of the Safety Sensitive Employee's receipt of the test results, citation, notice, or disposition.*
 - (4) *Failure to comply with the requirements of this section shall subject the Safety Sensitive Employee to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.*
- G. *Off-the-job convictions. Safety Sensitive Employees who are arrested for off-the-job illegal alcohol or drug activity may be reassigned or suspended without pay in appropriate cases pending disposition of the criminal prosecution. Safety Sensitive Employees who are convicted of off-the-job illegal alcohol or drug activity may be considered in violation of this policy punishable in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code. In deciding what action to take, supervisors shall take into consideration the*

nature of the conviction, the relationship of the offense to the Safety Sensitive Employee's job responsibilities; the Safety Sensitive Employee's record with the County, and other factors relative to the impact of the Safety Sensitive Employee's conviction upon the conduct of County business.

§ 86-6-205. Implementation and training.

- A. The Director of Personnel is the primary Designated Employer Representative (hereinafter, "DER") for implementation of this Article II and has the responsibility to promulgate regulations and procedures to ensure that the program is in compliance with 49 CFR Parts 40, 382 and 392, as amended.
- B. Test administration.
- (1) Analytical urine drug testing and breath/saliva testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All Safety Sensitive Employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, or randomly as defined in this Article and regulations and procedures set forth by the DER. All Safety Sensitive Employees who have voluntarily sought assistance for problems with drugs or alcohol will be tested prior to returning to duty after completion of the Substance Abuse Professional's (hereinafter, "SAP") recommended treatment program and subsequent release to duty. In addition to other permissible testing, follow-up testing will be conducted for a period of one to five (5) years, with at least six (6) tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be as prescribed by the SAP.
 - (2) A drug test can be performed any time a Safety Sensitive 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 Safety Sensitive Employees will be subject to urine drug testing and breath/saliva 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 disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code. Any Safety Sensitive Employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through any method, including, without limitation, tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of falsifying test results through any method, including, without limitation, tampering, contamination, adulteration, or

substitution will be considered a test refusal and will result in the Safety Sensitive Employee's removal from duty and the safety sensitive employee shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

C. Pre-employment testing procedures.

- (1) All offers of employment for Safety Sensitive Positions are extended conditionally upon the applicant passing a pre-employment drug test. An applicant shall not be hired into a Safety Sensitive Position unless the applicant takes a drug test and receives a verified negative result.
- (2) No employee shall be placed, transferred, detailed, or promoted into a Safety Sensitive 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 Safety Sensitive Position receives a verified positive drug test result, the employee shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- (3) Any applicant or Safety Sensitive Employee that fails or refuses a pre-employment drug test, the conditional offer of employment is automatically rescinded. Failure or refusal of a pre-employment drug test shall disqualify an applicant for employment. An applicant or Safety Sensitive Employee may be considered for as Safety Sensitive Position in the future if documentation has been received evidencing that they have successfully completed a SAP referral, evaluation, and treatment plan and a negative pre-employment drug test has been conducted.
- (4) When a Safety Sensitive Employee is on extended leave for a period of 90 days or more, regardless of the reason, the Safety Sensitive 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. Positive test results will require following procedures set forth in the Substance Abuse Program Procedure Manual for Employees with Commercial Driver's Licenses under Federal Highway Policy.

§ 86-6-206. Compliance with policy as condition of employment.

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

§ 86-6-207. Voluntary rehabilitation.

- A. In an effort to meet the purpose of this substance abuse policy, the County provides a program that is helpful to Safety Sensitive Employees who would like to end their substance abuse but who have not tested positive in a drug or alcohol test. The County shall not take adverse action against such a Safety Sensitive Employee for voluntarily requesting assistance in dealing with a personal substance abuse problem but cannot perform Safety Sensitive Functions until the Safety Sensitive Employee has completed an approved rehabilitation or treatment program. The Safety Sensitive Employee may request leave to participate in a rehabilitation or treatment program. Assistance in contacting an approved rehabilitation or treatment program shall be provided by the Employee Assistance Program. At the conclusion of treatment, arrangements for drug and alcohol testing follow-up shall be made. Before returning to work in a Safety Sensitive Function, the Safety Sensitive Employee must have a verified negative test result.
- B. Voluntary participation in treatment programs may not prevent disciplinary action for violations of work rules that have already occurred.

§ 86-6-208. 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 in writing at least 30 days prior to any changes becoming effective.

§ 86-6-209. 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 of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

§ 86-6-210. 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 Safety Sensitive Employee.

ARTICLE III

Substance Abuse Program for positions covered by the Department of Transportation (hereinafter, "DOT"), Federal Transit Administration (hereinafter, "FTA") in Accordance with 49 CFR Parts 655 and 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. Language not italicized is required by FTA.

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

A. All persons who continue employment after the provisions of this Article III are effective or hereafter, tentatively selected for employment performing the following FTA Safety Sensitive Functions (hereinafter, "Safety Sensitive Functions"), and occupy FTA Safety Sensitive Positions (hereinafter, "Safety Sensitive Positions"), are referred to in this Article as "Safety Sensitive Employees" and shall be required to have urine drug tests and breath/saliva alcohol tests 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 for Employees of Transit Systems:

- (1) Operating a revenue service vehicle for any purpose, including when not in revenue service;
- (2) Operating a non-revenue service vehicle when it is required to be operated by a holder of a Commercial Driver's License (hereinafter, "CDL");
- (3) Controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service;
- (4) Maintaining a revenue service vehicle, including such acts as repairs, upkeep, overhaul, rebuilding or any other process which keeps the vehicle operational.

B. Job titles and class specifications for the Safety Sensitive Positions are listed in the Substance Abuse Testing Procedure Manual for Employees of Transit Systems.

§ 86-6-303. Purpose of Safety Sensitive Employee drug testing.

- 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, without limitation, 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 Safety Sensitive Employees function in the most efficient 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 testing policy shall be referred to the Director of Personnel, 150 Main Street, Prince Frederick, Maryland 20678.

§ 86-6-304. Statement of policy for affected Safety Sensitive Employees.

- A. Disciplinary action. A Safety Sensitive Employee that refuses to cooperate with this Article shall be immediately removed from performing Safety Sensitive Functions, and shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- 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, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- C. A County Safety Sensitive Employee reasonably suspected of violating procedures outlined in the Substance Abuse Testing Procedure Manual for Employees of Transit Systems 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 shall subject a Safety Sensitive Employee to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- D. Required hours of compliance. Off-the-job alcohol or drug use may adversely affect a Safety Sensitive Employee's job performance and could jeopardize the safety of other employees, the public, and property.
 - (1) For those Safety Sensitive Employees on-duty or on-call to perform Safety Sensitive Functions no alcohol or alcohol containing substance may be consumed four (4) 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 (8) hours following an accident or until the Safety Sensitive Employee undergoes a post-accident test, whichever occurs first. Each

Safety Sensitive 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 controlled dangerous substances at any time on or off-the-job although testing shall only be conducted while on-duty. A Safety Sensitive Employee shall not report for duty or remain on-duty requiring the performance of Safety Sensitive Functions when the Safety Sensitive Employee uses any drugs, except when the use is pursuant to the instructions of a physician who has advised the Safety Sensitive Employee that the substance does not adversely affect the Safety Sensitive Employee's ability to perform Safety Sensitive Functions. This policy also applies to off-site lunch periods or breaks when the Safety Sensitive Employee is scheduled to return to work.
- E. *Prescription drugs. Safety Sensitive 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 require doctor's certification that the Safety Sensitive Employee can continue his regular job, be reassigned to another non-Safety Sensitive Function, or be placed on leave if there is no available job which the employee can safely perform.*
- F. Notification.
- (1) A Safety Sensitive Employee shall report the following:
 - (a) *receipt of any citation, regardless when cited, 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) *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) *receipt of any citation alleging a moving traffic violation, regardless when cited;*
 - (d) *notice of intended or actual suspension or revocation of the Safety Sensitive Employee's driver's license;*
 - (e) *receipt of any citation alleging a failure to submit to a test as required by Section 16-205.1 of the Transportation Article of the*

Annotated Code of Maryland, as amended from time to time, regardless when cited;

- (f) failure of the Safety Sensitive Employee to submit to random drug or alcohol testing as prescribed by this Chapter;*
 - (g) any positive results for drug and/or alcohol tests administered on the Safety Sensitive Employee; and*
 - (h) any of the above actions occurring in other states must be reported as if the event occurred in Maryland.*
- (2) The notification required by Paragraph F-(1) above shall be given in writing by the Safety Sensitive Employee to the Safety Sensitive Employee's supervisor, department head, and Director of Personnel.*
 - (3) The notification of failure to submit to testing as prescribed by Paragraph F.1(f) above or of positive test result by Paragraph F.1(g) above shall be given within five (5) days after the failure to submit to drug and/or alcohol test or of the Safety Sensitive Employee's receipt of the test results, citation, notice or disposition.*
 - (4) Failure to comply with the requirements of this section shall subject the Safety Sensitive Employee to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.*
- G. Off-the-job convictions. Safety Sensitive Employees who are arrested for off-the-job illegal alcohol or drug activity may be reassigned or suspended without pay in appropriate cases pending disposition of the criminal prosecution. Safety Sensitive Employees who are convicted of off-the-job illegal alcohol or drug activity may be considered in violation of this policy punishable in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code. In deciding what action to take, supervisors shall take into consideration the nature of the conviction, the relationship of the offense to the Safety Sensitive Employee's job responsibilities, the Safety Sensitive Employee's record with the County, and other factors relative to the impact of the Safety Sensitive Employee's conviction upon the conduct of County business.*

§ 86-6-305. Implementation and training.

- A. The Director of Personnel is the primary Designated Employer Representative (hereinafter, "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) Analytical urine drug testing and breath/saliva testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All Safety Sensitive Employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, or randomly as defined in this Article and regulations and procedures set forth by the DER. All Safety Sensitive Employees who have voluntarily sought assistance for problems with drugs or alcohol will be tested prior to returning to duty after completion of the Substance Abuse Professional's (hereinafter, "SAP") recommended treatment program and subsequent release to duty. In addition to other permissible testing, follow-up testing will be conducted for a period of one to five (5) years, with at least six (6) tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be as prescribed by the SAP.
- (2) A drug test can be performed any time a Safety Sensitive 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 Safety Sensitive Employees will be subject to urine drug testing and breath/saliva 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 disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code. Any Safety Sensitive Employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through any method, including, without limitation, tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of falsifying test results through any method, including, without limitation, tampering, contamination, adulteration, or substitution will be considered a test refusal and will result in the Safety Sensitive Employee's removal from duty and the Safety Sensitive Employee shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

C. Pre-employment testing procedures.

- (1) All offers of employment for Safety Sensitive Positions are extended conditionally upon the applicant passing a pre-employment drug test. An applicant shall not be hired into a Safety Sensitive Position unless the applicant takes a drug test and receives a verified negative result.
- (2) No employee shall be placed, transferred, detailed, or promoted into a Safety Sensitive 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 Safety Sensitive Position receives a verified positive drug test result, the employee shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

- (3) Any applicant or Safety Sensitive Employee that fails or refuses a pre-employment drug test, the conditional offer of employment is automatically rescinded. Failure or refusal of a pre-employment drug test shall disqualify an applicant for employment. An applicant or Safety Sensitive Employee may be considered for a Safety Sensitive Position in the future if 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 Safety Sensitive Employee is on extended leave for a period of 90 days or more, regardless of the reason, the Safety Sensitive 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. Positive test results will require following procedures set forth in the Substance Abuse Program Procedure Manual for FTA.

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

Compliance with the County's substance abuse policy is a condition of employment. Safety Sensitive Employees shall be required to sign an acknowledgment that they have received a copy of 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 is helpful to Safety Sensitive Employees who would like to end their substance abuse but who have not tested positive in a drug or alcohol test. The County shall not take adverse action against such a Safety Sensitive Employee for voluntarily requesting assistance in dealing with a personal substance abuse problem but cannot perform Safety Sensitive Functions until the Safety Sensitive Employee has completed an approved rehabilitation or treatment program. The Safety Sensitive Employee may request leave to participate in a rehabilitation or treatment program. Assistance in contacting an approved rehabilitation or treatment program shall be provided by the Employee Assistance Program. At the conclusion of treatment, arrangements for drug and alcohol testing follow-up shall be made. Before returning to work in a Safety

Sensitive Function, the Safety Sensitive Employee must have a verified negative test result.

- B. 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 in writing at least 30 days prior to any changes becoming effective.

§ 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 of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

§ 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 Safety Sensitive Employee.

ARTICLE IV

Substance Abuse Program for positions covered by the United States Coast Guard Testing Program in Accordance with 46 CFR Subpart 4.06, Marine Casualties and Investigations, 46 CFR Part 16, Chemical Testing and 33 CFR Part 95, Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug, and 49 CFR 40 Department of Transportation (hereinafter, "DOT") Workplace Drug Testing Program as Amended from Time to Time.

§ 86-6-401. 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. Language not italicized is required by DOT and the Coast Guard.

§ 86-6-402. Persons subject to testing.

- A. All persons who continue employment after the provisions of this Article are effective or, hereafter, tentatively selected for employment performing the following United States Coast Guard Safety Sensitive Functions (hereinafter, "Safety Sensitive Functions"), and occupy United States Coast Guard Safety Sensitive Positions (hereinafter, "Safety Sensitive Positions") are referred to in this Article IV as "Safety Sensitive Employees" and shall be required to have urine drug tests and breath/saliva alcohol tests pursuant to policies and procedures adopted by the Office of Personnel to ensure compliance with the Coast Guard and DOT as found in the Substance Abuse Testing Procedure Manual for Marine Vessel Employees:

Work involving control, operation, lifesaving, mooring, or cargo on a vessel on either a routine or emergency only basis.

- B. Job titles and class specifications for these Safety Sensitive Positions are listed in the Substance Abuse Testing Procedure Manual for Marine Vessel Employees.

§ 86-6-403. Purpose of employee drug testing.

- 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, without limitation, 49 CFR Parts 40 and 46 CFR Subpart 4.06, Marine Casualties and Investigations, 46 CFR Part 16, Chemical Testing and 33 CFR Part 95, Operating a Vessel While Intoxicated, and 49 CFR 40 DOT Workplace Drug Testing Program, 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 Safety Sensitive Employees function in the most efficient 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 testing policy shall be referred to the Director of Personnel, 150 Main Street, Prince Frederick, Maryland 20678.

§ 86-6-404. Statement of policy for affected Safety Sensitive Employees.

- A. Disciplinary action. A Safety Sensitive Employee that refuses to cooperate with this Article IV shall be immediately removed from performing Safety Sensitive Functions, and shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- B. Consistent with the Drug-Free Workplace Act of 1988, it is illegal to manufacture, use, sell, distribute, or possess controlled dangerous substances (substances controlled by federal or state government) 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, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

- C. A County Safety Sensitive Employee reasonably suspected of violating procedures outlined in the Substance Abuse Testing Procedure Manual for Marine Vessel Employees 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 shall subject a Safety Sensitive Employee to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- D. Required hours of compliance. Off-the-job alcohol or drug use may adversely affect a Safety Sensitive Employee's job performance and could jeopardize the safety of other employees, the public, and property.
- (1) For those Safety Sensitive Employees on-duty or on-call to perform Safety Sensitive Functions, no alcohol or alcohol containing substance may be consumed four (4) 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 (8) hours following an accident or until the Safety Sensitive Employee undergoes a post-accident test, whichever occurs first. Each Safety Sensitive 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 controlled dangerous substances at any time on or off-the-job although testing shall only be conducted while on-duty. A Safety Sensitive Employee shall not report for duty or remain on-duty requiring the performance of Safety Sensitive Functions when the Safety Sensitive Employee uses any drugs, except when the use is pursuant to the instructions of a physician who has advised the Safety Sensitive Employee that the substance does not adversely affect the Safety Sensitive Employee's ability to perform Safety Sensitive Functions. This policy also applies to off-site lunch periods or breaks when the Safety Sensitive Employee is scheduled to return to work.
- E. *Prescription drugs. Safety Sensitive 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 require doctor's certification that the Safety Sensitive Employee can continue his regular job, be reassigned to another non-Safety Sensitive Function, or be placed on leave if there is no available job which the employee can safely perform.*

F. Notification.

(1) A Safety Sensitive Employee shall report the following:

- (a) receipt of any citation, regardless when cited, 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) 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) receipt of any alleging a moving traffic violation, regardless when cited;
- (d) notice of intended or actual suspension or revocation of the Safety Sensitive Employee's driver's license;
- (e) receipt of any citation alleging a failure to submit to a test as required by Section 16-205.1 of the Transportation Article of the Annotated Code of Maryland, as amended from time to time, regardless when cited;
- (f) failure of the Safety Sensitive Employee to submit to random drug or alcohol testing as prescribed by this Chapter; and
- (g) any positive results for drug and/or alcohol tests administered on the Safety Sensitive Employee; and
- (h) any of the above actions occurring in other states must be reported as if the event occurred in Maryland.

(2) The notification required by Paragraph (F. (1)) above shall be in writing given by the Safety Sensitive Employee to the Safety Sensitive Employee's supervisor, department head, and Director of Personnel.

(3) The notification of failure to submit to testing as prescribed by Paragraph F.1(f) above or of positive test results by Paragraph F.1(g) above shall be given within five (5) days after the failure to submit to a drug and/or alcohol test or of the Safety Sensitive Employee's receipt of the test results, citation, notice, or disposition.

(4) Failure to comply with the requirements of this section shall subject the Safety Sensitive Employee to disciplinary action up to and including

termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

- G. *Off-the-job convictions. Safety Sensitive Employees who are arrested for off-the-job illegal alcohol or drug activity may be reassigned or suspended without pay in appropriate cases pending disposition of the criminal prosecution. Safety Sensitive Employees who are convicted of off-the-job illegal alcohol or drug activity may be considered in violation of this policy punishable in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code. In deciding what action to take, supervisors shall take into consideration the nature of the conviction, the relationship of the offense to the Safety Sensitive Employee's job responsibilities, the Safety Sensitive Employee's record with the County, and other factors relative to the impact of the Safety Sensitive Employee's conviction upon the conduct of County business.*

§ 86-6-405. Implementation and training.

- A. The Director of Personnel is the primary Designated Employer Representative (hereinafter, "DER") for implementation of this Article IV and has the responsibility to promulgate regulations and procedures to ensure that the program is in compliance with 33 CFR Part 95, 46 CFR Subparts 4.06 and 16, 49 CFR Part 40, as amended.
- B. Test administration.
- (1) Analytical urine drug testing and breath/saliva testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All Safety Sensitive Employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and randomly as defined in this Article and regulations and procedures set forth by the DER. All Safety Sensitive Employees who have voluntarily sought assistance for problems with drugs or alcohol will be tested prior to returning to duty after completion of the Substance Abuse Professional's (hereinafter, "SAP") recommended treatment program and subsequent release to duty. In addition to other permissible testing, follow-up testing will be conducted for a period of one to five (5) years, with at least six (6) tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be as prescribed by the SAP.
 - (2) A drug test can be performed any time a Safety Sensitive 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 Safety Sensitive Employees will be subject to urine drug testing and breath/saliva 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 disciplinary action up to and including termination of

employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code. Any Safety Sensitive Employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through any method, including, without limitation, tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of falsifying test results through any method, including, without limitation, tampering, contamination, adulteration, or substitution will be considered a test refusal and will result in the Safety Sensitive Employee's removal from duty and the Safety Sensitive Employee shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

C. Pre-employment testing procedures.

- (1) All offers of employment for Safety Sensitive Positions are extended conditionally upon the applicant passing a pre-employment drug test. An applicant shall not be hired into a Safety Sensitive Position unless the applicant takes a drug test and receives a verified negative result.
- (2) No employee shall be placed, transferred, detailed, or promoted into a Safety Sensitive 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 Safety Sensitive Position receives a verified positive drug test result, the employee shall be subject to disciplinary action up to and including termination of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.
- (3) Any applicant or Safety Sensitive Employee that fails or refuses a pre-employment drug test; the conditional offer of employment is automatically rescinded. Failure or refusal of a pre-employment drug test shall disqualify an applicant for employment. An applicant or Safety Sensitive Employee may be considered for a Safety Sensitive Position in the future if documentation has been received evidencing that they have successfully completed a SAP referral, evaluation, and treatment plan and a negative pre-employment drug test has been conducted.
- (4) When a Safety Sensitive Employee is on extended leave or no longer employed the employee shall be required to take a pre-employment drug test under 46 CFR Part 16, as amended, and receive a negative test result prior to performing Safety Sensitive Functions. Positive test results will require following procedures set forth in the Substance Abuse Program Procedure Manual for Marine Vessel Employees. Pre-employment drug testing may be waived by the County if within the six months prior to returning to the Safety Sensitive Position a drug test has been passed and no subsequent positive tests have occurred or the applicant has been

subject to a random drug testing program in accordance with Coast Guard regulations for at least 60 days of the preceding 185 days to returning to work and did not have a positive drug test or refuse a drug test. A waiver requires Medical Review Officer documentation.

§ 86-6-406. Compliance with policy as condition of employment.

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

§ 86-6-407. Voluntary rehabilitation.

- A. In an effort to meet the purpose of this substance abuse policy, the County provides a program that is helpful to Safety Sensitive Employees who would like to end their substance abuse but who have not tested positive in a drug or alcohol test. The County shall not take adverse action against such a Safety Sensitive Employee for voluntarily requesting assistance in dealing with a personal substance abuse problem but cannot perform Safety Sensitive Functions until the Safety Sensitive Employee has completed an approved rehabilitation or treatment program. The Safety Sensitive 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 Employment Assistance Program. At the conclusion of treatment, arrangements for drug and alcohol testing follow-up shall be made. Before returning to work in a Safety Sensitive Function, the Safety Sensitive Employee must have a verified negative test result.
- B. Voluntary participation in treatment programs may not prevent disciplinary action for violations of work rules that have already occurred.

§ 86-6-408. 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 in writing at least 30 days prior to instituting any changes becoming effective.

§ 86-6-409. 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 of employment, in accordance with the procedures set forth in Part 9 of Chapter 86 of the Calvert County Code.

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§ 86-6-410. 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 Safety Sensitive Employee.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that Chapter 86 of the Code, as amended hereby, shall remain in full force and effect.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that, in the event any portion of this Ordinance is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Ordinance shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Ordinance, or unless deletion of the valid portion would produce a result inconsistent with the purpose and intent of the Board of County Commissioners in enacting this Ordinance.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that the foregoing recitals are hereby incorporated and adopted as if fully set forth.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that this Ordinance shall be adopted and effective upon recordation and publication of a fair summary, which shall be no sooner than ten (10) days from the date of adoption.

DONE, this 3rd day of June, 2014, by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Aye: 5

Nay: 0

Absent/Abstain: 0

[SIGNATURES ON FOLLOWING PAGE]

Received for Record..... 20.....
at..... o'clock..... M. Same day
recorded in Liber KPS No.....
Folio..... COUNTY COMMISSIONERS
ORDINANCES AND RESOLUTION.

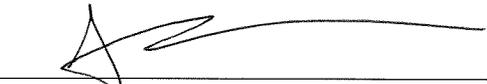


ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF CALVERT COUNTY, MARYLAND**

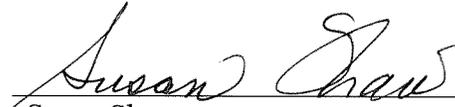

Maureen Frederick, Clerk

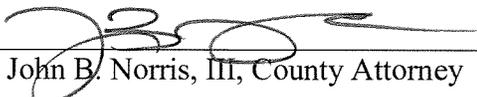

Pat Nutter, President


Steven R. Weems, Vice-President

Approved for legal sufficiency on
5/22/14 by:


Gerald W. Clark


Susan Shaw


John B. Norris, III, County Attorney


Evan K. Slaughenbaupt Jr.

Received for Record.....6-13.....2014
at 10:45 o'clock.....9.....M. Same day
recorded in Liber KPS No. 45
Folio 36.....COUNTY COMMISSIONERS
ORDINANCES AND RESOLUTION.

