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PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

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APPENDIX A TO PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM INFORMED CONSENT FORM.

AUTHORITY: 42 U.S.C. 2201(i)(3), (p); 29 U.S.C. 668; E.O. 12196, 3 CFR 1981 comp., p. 145 as amended.

SOURCE: 64 FR 68905, Dec. 8, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 850.1 Scope.

This part establishes a chronic beryllium disease prevention program (CBDPP) that supplements and is integrated into existing worker protection programs that are established for De-

partment of Energy (DOE) employees and DOE contractor employees.

§ 850.2 Applicability.

(a) This part applies to:

(1) DOE offices responsible for operations or activities that involve present or past exposure, or the potential for exposure, to beryllium at DOE facilities;

(2) DOE contractors with operations or activities that involve present or past exposure, or the potential for exposure, to beryllium at DOE facilities; and

(3) Any current DOE employee, DOE contractor employee, or other worker at a DOE facility who is or was exposed or potentially exposed to beryllium at a DOE facility.

(b) This part does not apply to:

(1) Beryllium articles; and

(2) DOE laboratory operations that meet the definition of laboratory use of hazardous chemicals in 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemical in Laboratories.

§ 850.3 Definitions.

(a) As used in this part:

Action level means the level of airborne concentration of beryllium established pursuant to section 850.23 of this part that, if met or exceeded, requires the implementation of worker protection provisions specified in that section.

Authorized person means any person required by work duties to be in a regulated area.

Beryllium means elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent beryllium or greater that may be released as an airborne particulate.

Beryllium activity means an activity taken for, or by, DOE at a DOE facility that can expose workers to airborne beryllium, including but not limited to design, construction, operation, maintenance, or decommissioning, and which may involve one DOE facility or operation or a combination of facilities and operations.

Beryllium article means a manufactured item that is formed to a specific shape or design during manufacture, that has end-use functions that depend

in whole or in part on its shape or design during end use, and that does not release beryllium or otherwise result in exposure to airborne concentrations of beryllium under normal conditions of use.

Beryllium-associated worker means a current worker who is or was exposed or potentially exposed to airborne concentrations of beryllium at a DOE facility, including:

- (1) A beryllium worker;
- (2) A current worker whose work history shows that the worker may have been exposed to airborne concentrations of beryllium at a DOE facility;
- (3) A current worker who exhibits signs or symptoms of beryllium exposure; and
- (4) A current worker who is receiving medical removal protection benefits.

Beryllium emergency means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an unexpected and significant release of beryllium at a DOE facility.

Beryllium-induced lymphocyte proliferation test (Be-LPT) is an in vitro measure of the beryllium antigen-specific, cell-mediated immune response.

Beryllium worker means a current worker who is regularly employed in a DOE beryllium activity.

Breathing zone is defined as a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches.

DOE means the U.S. Department of Energy.

DOE contractor means any entity under contract with DOE (or its subcontractor) that has responsibility for performing beryllium activities at DOE facilities.

DOE facility means any facility operated by or for DOE.

Head of DOE Field Element means an individual who is the manager or head of the DOE operations office or field office, or any official to whom the Head of DOE Field Element delegates his or her functions under this part.

High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer monodispersed particles.

Immune response refers to the series of cellular events by which the immune system reacts to challenge by an antigen.

Medical removal protection benefits means the employment rights established by section 850.35 of this part for beryllium-associated workers who voluntarily accept temporary or permanent medical removal from beryllium areas following a recommendation by the Site Occupational Medicine Director.

Operational area means an area where workers are routinely in the presence of beryllium as part of their work activity.

Regulated area means an area demarcated by the responsible employer in which the airborne concentration of beryllium exceeds, or can reasonably be expected to exceed, the action level.

Removable contamination means beryllium contamination that can be removed from surfaces by nondestructive means, such as casual contact, wiping, brushing or washing.

Responsible employer means:

- (1) For DOE contractor employees, the DOE contractor office that is directly responsible for the safety and health of DOE contractor employees while performing a beryllium activity or other activity at a DOE facility; or
- (2) For DOE employees, the DOE office that is directly responsible for the safety and health of DOE Federal employees while performing a beryllium activity or other activity at a DOE facility; and
- (3) Any person acting directly or indirectly for such office with respect to terms and conditions of employment of beryllium-associated workers.

Site Occupational Medical Director (SOMD) means the physician responsible for the overall direction and operation of the site occupational medicine program.

Unique identifier means the part of a paired set of labels, used in records that contain confidential information, that does not identify individuals except by using the matching label.

Worker means a person who performs work for or on behalf of DOE, including

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a DOE employee, an independent contractor, a DOE contractor or subcontractor employee, or any other person who performs work at a DOE facility.

Worker exposure means the exposure of a worker to airborne beryllium that would occur if the worker were not using respiratory protective equipment.

(b) Terms undefined in this part that are defined in the Atomic Energy Act of 1954 shall have the same meaning as under that Act.

§ 850.4 Enforcement.

DOE may take appropriate steps under its contracts with DOE contractors to ensure compliance with this part. These steps include, but are not limited to, contract termination or reduction in fee.

§ 850.5 Dispute resolution.

(a) Subject to paragraphs (b) and (c) of this section, any worker who is adversely affected by an action taken, or failure to act, under this part may petition the Office of Hearings and Appeals for relief in accordance with 10 CFR part 1003, Subpart G.

(b) The Office of Hearings and Appeals may not accept a petition from a worker unless the worker requested the responsible employer to correct the violation, and the responsible employer refused or failed to take corrective action within a reasonable time.

(c) If the dispute relates to a term or condition of employment that is covered by a grievance-arbitration provision in a collective bargaining agreement, the worker must exhaust all applicable grievance-arbitration procedures before filing a petition for relief with the Office of Hearings and Appeals. A worker is deemed to have exhausted all applicable grievance-arbitration procedures if 150 days have passed since the filing of a grievance and a final decision on it has not been issued.

Subpart B—Administrative Requirements

§ 850.10 Development and approval of the CBDPP.

(a) *Preparation and submission of initial CBDPP to DOE.* (1) The responsible

employer at a DOE facility must ensure that a CBDPP is prepared for the facility and submitted to the appropriate Head of DOE Field Element before beginning beryllium activities, but no later than April 6, 2000 of this part.

(2) If the CBDPP has separate sections addressing the activities of multiple contractors at the facility, the Head of DOE Field Element will designate a single DOE contractor to review and approve the sections prepared by other contractors, so that a single consolidated CBDPP for the facility is submitted to the Head of DOE Field Element for review and approval.

(b) *DOE review and approval.* The appropriate Head of DOE Field Element must review and approve the CBDPP.

(1) The initial CBDPP and any updates are deemed approved 90 days after submission if they are not specifically approved or rejected by DOE earlier.

(2) The responsible employer must furnish a copy of the approved CBDPP, upon request, to the DOE Assistant Secretary for Environment, Safety and Health or designee, DOE program offices, and affected workers or their designated representatives.

(c) *Update.* The responsible employer must submit an update of the CBDPP to the appropriate Head of DOE Field Element for review and approval whenever a significant change or significant addition to the CBDPP is made or a change in contractors occurs. The Head of DOE Field Element must review the CBDPP at least annually and, if necessary, require the responsible employer to update the CBDPP.

(d) *Labor Organizations.* If a responsible employer employs or supervises beryllium-associated workers who are represented for collective bargaining by a labor organization, the responsible employer must:

(1) Give the labor organization timely notice of the development and implementation of the CBDPP and any updates thereto; and

(2) Upon timely request, bargain concerning implementation of this part, consistent with the Federal labor laws.

§ 850.11 General CBDPP requirements.

(a) The CBDPP must specify the existing and planned operational tasks

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that are within the scope of the CBDPP. The CBDPP must augment and, to the extent feasible, be integrated into the existing worker protection programs that cover activities at the facility.

(b) The detail, scope, and content of the CBDPP must be commensurate with the hazard of the activities performed, but in all cases the CBDPP must:

(1) Include formal plans and measures for maintaining exposures to beryllium at or below the permissible exposure level prescribed in § 850.22;

(2) Satisfy each requirement in subpart C of this part;

(3) Contain provisions for:

(i) Minimizing the number of workers exposed and potentially exposed to beryllium;

(ii) Minimizing the number of opportunities for workers to be exposed to beryllium;

(iii) Minimizing the disability and lost work time of workers due to chronic beryllium disease, beryllium sensitization and associated medical care; and

(iv) Setting specific exposure reduction and minimization goals that are appropriate for the beryllium activities covered by the CBDPP to further reduce exposure below the permissible exposure limit prescribed in § 850.22.

§ 850.12 Implementation.

(a) The responsible employer must manage and control beryllium exposures in all DOE beryllium activities consistent with the approved CBDPP.

(b) No person employed by DOE or a DOE contractor may take or cause any action inconsistent with the requirements of:

(1) This part,

(2) An approved CBDPP, and

(3) Any other Federal statute or regulation concerning the exposure of workers to beryllium at DOE facilities.

(c) No task involving potential exposure to airborne beryllium that is outside the scope of the existing CBDPP may be initiated until an update of the CBDPP is approved by the Head of DOE Field Element, except in an unexpected situation and, then, only upon approval of the Head of DOE Field Element.

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(d) Nothing in this part precludes a responsible employer from taking any additional protective action that it determines to be necessary to protect the health and safety of workers.

(e) Nothing in this part affects the responsibilities of DOE officials under the Federal Employee Occupational Safety and Health Program (29 CFR part 1960) and related DOE directives.

§ 850.13 Compliance.

(a) The responsible employer must conduct activities in compliance with its CBDPP.

(b) The responsible employer must achieve compliance with all elements of its CBDPP no later than January 7, 2002.

(c) With respect to a particular beryllium activity, the contractor in charge of the activity is responsible for complying with this part. If no contractor is responsible for a beryllium activity, DOE must ensure implementation of, and compliance with, this part.

Subpart C—Specific Program Requirements

§ 850.20 Baseline beryllium inventory.

(a) The responsible employer must develop a baseline inventory of the locations of beryllium operations and other locations of potential beryllium contamination, and identify the workers exposed or potentially exposed to beryllium at those locations.

(b) In conducting the baseline inventory, the responsible employer must:

(1) Review current and historical records;

(2) Interview workers;

(3) Document the characteristics and locations of beryllium at the facility; and

(4) Conduct air, surface, and bulk sampling.

(c) The responsible employer must ensure that:

(1) The baseline beryllium inventory is managed by a qualified individual (e.g., a certified industrial hygienist); and

(2) The individuals assigned to this task have sufficient knowledge and experience to perform such activities properly.

§ 850.21 Hazard assessment.

(a) If the baseline inventory establishes the presence of beryllium, the responsible employer must conduct a beryllium hazard assessment that includes an analysis of existing conditions, exposure data, medical surveillance trends, and the exposure potential of planned activities. The exposure determinants, characteristics and exposure potential of activities must be prioritized so that the activities with the greatest risks of exposure are evaluated first.

(b) The responsible employer must ensure that:

(1) The hazard assessment is managed by a qualified individual (e.g., a certified industrial hygienist); and

(2) The individuals assigned to this task have sufficient knowledge and experience to perform such activities properly.

§ 850.22 Permissible exposure limit.

The responsible employer must assure that no worker is exposed to an airborne concentration of beryllium greater than the permissible exposure limit established in 29 CFR 1910.1000, as measured in the worker's breathing zone by personal monitoring, or a more stringent TWA PEL that may be promulgated by the Occupational Safety and Health Administration as a health standard.

§ 850.23 Action level.

(a) The responsible employer must include in its CBDPP an action level that is no greater than 0.2 µg/m³, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring.

(b) If an airborne concentration of beryllium is at or above the action level, the responsible employer must implement §§ 850.24(c) (periodic monitoring), 850.25 (exposure reduction and minimization), 850.26 (regulated areas), 850.27 (hygiene facilities and practices), 850.28 (respiratory protection), 850.29 (protective clothing and equipment), and 850.38 (warning signs) of this part.

§ 850.24 Exposure monitoring.

(a) *General.* The responsible employer must ensure that:

(1) Exposure monitoring is managed by a qualified individual (e.g., a certified industrial hygienist); and

(2) The individuals assigned to this task have sufficient industrial hygiene knowledge and experience to perform such activities properly.

(b) *Initial monitoring.* The responsible employer must perform initial monitoring in areas that may have airborne beryllium, as shown by the baseline inventory and hazard assessment. The responsible employer must apply statistically-based monitoring strategies to obtain a sufficient number of sample results to adequately characterize exposures, before reducing or terminating monitoring.

(1) The responsible employer must determine workers' 8-hour TWA exposure levels by conducting personal breathing zone sampling.

(2) Exposure monitoring results obtained within the 12 months preceding the effective date of this part may be used to satisfy this requirement if the measurements were made as provided in paragraph (b)(1) of this section.

(c) *Periodic exposure monitoring.* The responsible employer must conduct periodic monitoring of workers who work in areas where airborne concentrations of beryllium are at or above the action level. The monitoring must be conducted in a manner and at a frequency necessary to represent workers' exposure, as specified in the CBDPP. This periodic exposure monitoring must be performed at least every 3 months (quarterly).

(d) *Additional exposure monitoring.* The responsible employer must perform additional monitoring if operations, maintenance or procedures change, or when the responsible employer has any reason to suspect such a change has occurred.

(e) *Accuracy of monitoring.* The responsible employer must use a method of monitoring and analysis that has an accuracy of not less than plus or minus 25 percent, with a confidence level of 95 percent, for airborne concentrations of beryllium at the action level.

(f) *Analysis.* The responsible employer must have all samples collected to satisfy the monitoring requirements of this part analyzed in a laboratory accredited for metals by the American

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Industrial Hygiene Association (AIHA) or a laboratory that demonstrates quality assurance for metals analysis that is equivalent to AIHA accreditation.

(g) *Notification of monitoring results.*

(1) The responsible employer must, within 10 working days after receipt of any monitoring results, notify the affected workers of monitoring results in writing. This notification of monitoring results must be:

(i) Made personally to the affected worker; or

(ii) Posted in location(s) that is readily accessible to the affected worker, but in a manner that does not identify the individual to other workers.

(2) If the monitoring results indicate that a worker's exposure is at or above the action level, the responsible employer must include in the notice:

(i) A statement that the action level has been met or exceeded; and

(ii) A description of the corrective action being taken by the responsible employer to reduce the worker's exposure to below the action level, if practicable.

(3) If the monitoring results indicate that worker exposure is at or above the action level, the responsible employer must also notify DOE and the SOMD of these results within 10 working days after receipt.

§ 850.25 Exposure reduction and minimization.

(a) The responsible employer must ensure that no worker is exposed above the exposure limit prescribed in § 850.22.

(b) The responsible employer must, in addition:

(1) Where exposure levels are at or above the action level, establish a formal exposure reduction and minimization program to reduce exposure levels to below the action level, if practicable. This program must be described in the responsible employer's CBDPP and must include:

(i) Annual goals for exposure reduction and minimization;

(ii) A rationale for and a strategy for meeting the goals;

(iii) Actions that will be taken to achieve the goals; and

(iv) A means of tracking progress towards meeting the goals or dem-

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onstrating that the goals have been met.

(2) Where exposure levels are below the action level, implement actions for reducing and minimizing exposures, if practicable. The responsible employer must include in the CBDPP a description of the steps to be taken for exposure reduction and minimization and a rationale for those steps.

(c) The responsible employer must implement exposure reduction and minimization actions using the conventional hierarchy of industrial hygiene controls (*i.e.*, engineering controls, administrative controls, and personal protective equipment in that order).

§ 850.26 Regulated areas.

(a) If airborne concentrations of beryllium in areas in DOE facilities are measured at or above the action level, the responsible employer must establish regulated areas for those areas.

(b) The responsible employer must demarcate regulated areas from the rest of the workplace in a manner that adequately alerts workers to the boundaries of such areas.

(c) The responsible employer must limit access to regulated areas to authorized persons.

(d) The responsible employer must keep records of all individuals who enter regulated areas. These records must include the name, date, time in and time out, and work activity.

§ 850.27 Hygiene facilities and practices.

(a) *General.* The responsible employer must assure that in areas where workers are exposed to beryllium at or above the action level, without regard to the use of respirators:

(1) Food or beverage and tobacco products are not used;

(2) Cosmetics are not applied, except in change rooms or areas and shower facilities required under paragraphs (b) and (c) of this section; and

(3) Beryllium workers are prevented from exiting areas that contain beryllium with contamination on their bodies or their personal clothing.

(b) *Change rooms or areas.* The responsible employer must provide clean

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change rooms or areas for beryllium workers who work in regulated areas.

(1) Separate facilities free of beryllium must be provided for beryllium workers to change into, and store, personal clothing, and clean protective clothing and equipment to prevent cross-contamination;

(2) The change rooms or areas that are used to remove beryllium-contaminated clothing and protective equipment must be maintained under negative pressure or located so as to minimize dispersion of beryllium into clean areas; and

(c) *Showers and handwashing facilities.*

(1) The responsible employer must provide handwashing and shower facilities for beryllium workers who work in regulated areas.

(2) The responsible employer must assure that beryllium workers who work in regulated areas shower at the end of the work shift.

(d) *Lunchroom facilities.* (1) The responsible employer must provide lunchroom facilities that are readily accessible to beryllium workers, and ensure that tables for eating are free of beryllium, and that no worker in a lunchroom facility is exposed at any time to beryllium at or above the action level.

(2) The responsible employer must assure that beryllium workers do not enter lunchroom facilities with protective work clothing or equipment unless the surface beryllium has been removed from clothing and equipment by HEPA vacuuming or other method that removes beryllium without dispersing it.

(e) The change rooms or areas, shower and handwashing facilities, and lunchroom facilities must comply with 29 CFR 1910.141, Sanitation.

§ 850.28 Respiratory protection.

(a) The responsible employer must establish a respiratory protection program that complies with the respiratory protection program requirements of 29 CFR 1910.134, Respiratory Protection.

(b) The responsible employer must provide respirators to, and ensure that they are used by, all workers who:

(1) Are exposed to an airborne concentration of beryllium at or above the action level, or

(2) Are performing tasks for which analyses indicate the potential for exposures at or above the action level.

(c) The responsible employer must include in the respiratory protection program any beryllium-associated worker who requests to use a respirator for protection against airborne beryllium, regardless of measured exposure levels.

(d) The responsible employer must select for use by workers:

(1) Respirators approved by the National Institute for Occupational Safety and Health (NIOSH) if NIOSH-approved respirators exist for a specific DOE task; or

(2) Respirators that DOE has accepted under the DOE Respiratory Protection Acceptance Program if NIOSH-approved respirators do not exist for specific DOE tasks.

§ 850.29 Protective clothing and equipment.

(a) The responsible employer must provide protective clothing and equipment to beryllium workers and ensure its appropriate use and maintenance, where dispersible forms of beryllium may contact worker's skin, enter openings in workers' skin, or contact workers' eyes, including where:

(1) Exposure monitoring has established that airborne concentrations of beryllium are at or above the action level;

(2) Surface contamination levels measured or presumed prior to initiating work are above the level prescribed in § 850.30;

(3) Surface contamination levels results obtained to confirm housekeeping efforts are above the level prescribed in § 850.30; and

(4) Any beryllium-associated worker who requests the use of protective clothing and equipment for protection against airborne beryllium, regardless of measured exposure levels.

(b) The responsible employer must comply with 29 CFR 1910.132, Personal Protective Equipment General Requirements, when workers use personal protective clothing and equipment.

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(c) The responsible employer must establish procedures for donning, doffing, handling, and storing protective clothing and equipment that:

(1) Prevent beryllium workers from exiting areas that contain beryllium with contamination on their bodies or their personal clothing; and

(2) Include beryllium workers exchanging their personal clothing for full-body protective clothing and footwear before they begin work in regulated areas.

(d) The responsible employer must ensure that no worker removes beryllium-contaminated protective clothing and equipment from areas that contain beryllium, except for workers authorized to launder, clean, maintain, or dispose of the clothing and equipment.

(e) The responsible employer must prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other means that may disperse beryllium into the air.

(f) The responsible employer must ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness. The responsible employer must:

(1) Ensure that beryllium-contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is placed in containers that prevent the dispersion of beryllium dust and that are labeled in accordance with § 850.38 of this part; and

(2) Inform organizations that launder or clean DOE beryllium-contaminated protective clothing or equipment that exposure to beryllium is potentially harmful, and that clothing and equipment should be laundered or cleaned in a manner prescribed by the responsible employer to prevent the release of airborne beryllium.

§ 850.30 Housekeeping.

(a) Where beryllium is present in operational areas of DOE facilities, the responsible employer must conduct routine surface sampling to determine housekeeping conditions. Surfaces contaminated with beryllium dusts and waste must not exceed a removable contamination level of $3 \mu\text{g}/100 \text{ cm}^2$ during non-operational periods. This sam-

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pling would not include the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems.

(b) When cleaning floors and surfaces in areas where beryllium is present at DOE facilities, the responsible employer must clean beryllium-contaminated floors and surfaces using a wet method, vacuuming or other cleaning methods, such as sticky tack cloths, that avoid the production of airborne dust. Compressed air or dry methods must not be used for such cleaning.

(c) The responsible employer must equip the portable or mobile vacuum units that are used to clean beryllium-contaminated areas with HEPA filters, and change the filters as often as needed to maintain their capture efficiency.

(d) The responsible employer must ensure that the cleaning equipment that is used to clean beryllium-contaminated surfaces is labeled, controlled, and not used for non-hazardous materials.

§ 850.31 Release criteria.

(a) The responsible employer must clean beryllium-contaminated equipment and other items to the lowest contamination level practicable, but not to exceed the levels established in paragraphs (b) and (c) of this section, and label the equipment or other items, before releasing them to the general public or a DOE facility for non-beryllium use, or to another facility for work involving beryllium.

(b) Before releasing beryllium-contaminated equipment or other items to the general public or for use in a non-beryllium area of a DOE facility, the responsible employer must ensure that:

(1) The removable contamination level of equipment or item surfaces does not exceed the higher of $0.2 \mu\text{g}/100 \text{ cm}^2$ or the concentration level of beryllium in soil at the point or release, whichever is greater;

(2) The equipment or item is labeled in accordance with § 850.38(b); and

(3) The release is conditioned on the recipient's commitment to implement controls that will prevent foreseeable beryllium exposure, considering the nature of the equipment or item and its future use and the nature of the beryllium contamination.

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(c) Before releasing beryllium-contaminated equipment or other items to another facility performing work with beryllium, the responsible employer must ensure that:

(1) The removable contamination level of equipment or item surfaces does not exceed $3 \mu\text{g}/100 \text{ cm}^2$;

(2) The equipment or item is labeled in accordance with § 850.38(b); and

(3) The equipment or item is enclosed or placed in sealed, impermeable bags or containers to prevent the release of beryllium dust during handling and transportation.

§ 850.32 Waste disposal.

(a) The responsible employer must control the generation of beryllium-containing waste, and beryllium-contaminated equipment and other items that are disposed of as waste, through the application of waste minimization principles.

(b) Beryllium-containing waste, and beryllium-contaminated equipment and other items that are disposed of as waste, must be disposed of in sealed, impermeable bags, containers, or enclosures to prevent the release of beryllium dust during handling and transportation. The bags, containers, and enclosures that are used for disposal of beryllium waste must be labeled according to § 850.38.

§ 850.33 Beryllium emergencies.

(a) The responsible employer must comply with 29 CFR 1910.120(1) for handling beryllium emergencies related to decontamination and decommissioning operations.

(b) The responsible employer must comply with 29 CFR 1910.120(q) for handling beryllium emergencies related to all other operations.

§ 850.34 Medical surveillance.

(a) *General.* (1) The responsible employer must establish and implement a medical surveillance program for beryllium-associated workers who voluntarily participate in the program.

(2) The responsible employer must designate a Site Occupational Medical Director (SOMD) who is responsible for administering the medical surveillance program.

(3) The responsible employer must ensure that the medical evaluations and procedures required by this section are performed by, or under the supervision of, a licensed physician who is familiar with the health effects of beryllium.

(4) The responsible employer must establish, and maintain, a list of beryllium-associated workers who may be eligible for protective measures under this part. The list must be:

(i) Based on the hazard assessment, exposure records, and other information regarding the identity of beryllium-associated workers; and

(ii) Adjusted at regular intervals based on periodic evaluations of beryllium-associated workers performed under paragraph (b)(2) of this section;

(5) The responsible employer must provide the SOMD with the information needed to operate and administer the medical surveillance program, including the:

(i) List of beryllium-associated workers required by paragraph (a)(4) of this section;

(ii) Baseline inventory;

(iii) Hazard assessment and exposure monitoring data;

(iv) Identity and nature of activities or operations on the site that are covered under the CBDPP, related duties of beryllium-associated workers; and

(v) Type of personal protective equipment used.

(6) The responsible employer must provide the following information to the SOMD and the examining physician:

(i) A copy of this rule and its preamble;

(ii) A description of the worker's duties as they pertain to beryllium exposure;

(iii) Records of the worker's beryllium exposure; and

(iv) A description of the personal protective and respiratory protective equipment used by the worker in the past, present, or anticipated future use.

(b) *Medical evaluations and procedures.* The responsible employer must provide, to beryllium-associated workers who voluntarily participate in the medical surveillance program, the medical evaluations and procedures required by this section at no cost and at

a time and place that is reasonable and convenient to the worker.

(1) *Baseline medical evaluation.* The responsible employer must provide a baseline medical evaluation to beryllium-associated workers. This evaluation must include:

(i) A detailed medical and work history with emphasis on past, present, and anticipated future exposure to beryllium;

(ii) A respiratory symptoms questionnaire;

(iii) A physical examination with special emphasis on the respiratory system, skin and eyes;

(iv) A chest radiograph (posterior-anterior, 14 × 17 inches) interpreted by a National Institute for Occupational Safety and Health (NIOSH) B-reader of pneumoconiosis or a board-certified radiologist (unless a baseline chest radiograph is already on file);

(v) Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV1);

(vi) A Be-LPT; and

(vii) Any other tests deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(2) *Periodic evaluation.* (i) The responsible employer must provide to beryllium workers a medical evaluation annually, and to other beryllium-associated workers a medical evaluation every three years. The periodic medical evaluation must include:

(A) A detailed medical and work history with emphasis on past, present, and anticipated future exposure to beryllium;

(B) A respiratory symptoms questionnaire;

(C) A physical examination with emphasis on the respiratory system;

(D) A Be-LPT; and

(E) Any other medical evaluations deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(ii) The responsible employer must provide to beryllium-associated workers a chest radiograph every five years.

(3) *Emergency evaluation.* The responsible employer must provide a medical evaluation as soon as possible to any worker who may have been exposed to beryllium because of a beryllium emer-

gency. The medical evaluation must include the requirements of paragraph (b)(2) of this section.

(c) *Multiple physician review.* The responsible employer must establish a multiple physician review process for beryllium-associated workers that allows for the review of initial medical findings, determinations, or recommendations from any medical evaluation conducted pursuant to paragraph (b) of this section.

(1) If the responsible employer selects the initial physician to conduct any medical examination or consultation provided to a beryllium-associated worker, the worker may designate a second physician to:

(i) Review any findings, determinations, or recommendations of the initial physician; and

(ii) Conduct such examinations, consultations and laboratory tests, as the second physician deems necessary to facilitate this review.

(2) The responsible employer must promptly notify a beryllium-associated worker in writing of the right to seek a second medical opinion after the initial physician provided by the responsible employer conducts a medical examination or consultation.

(3) The responsible employer may condition its participation in, and payment for, multiple physician review upon the beryllium-associated worker doing the following within fifteen (15) days after receipt of the notice, or receipt of the initial physician's written opinion, whichever is later:

(i) Informing the responsible employer in writing that he or she intends to seek a second medical opinion; and

(ii) Initiating steps to make an appointment with a second physician.

(4) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the responsible employer and the beryllium-associated worker must make efforts to encourage and assist the two physicians to resolve any disagreement.

(5) If, despite the efforts of the responsible employer and the beryllium-associated worker, the two physicians are unable to resolve their disagreement, then the responsible employer

and the worker, through their respective physicians, must designate a third physician to:

(i) Review any findings, determinations, or recommendations of the other two physicians; and

(ii) Conduct such examinations, consultations, laboratory tests, and consultations with the other two physicians, as the third physician deems necessary to resolve the disagreement among them.

(6) The SOMD must act consistently with the findings, determinations, and recommendations of the third physician, unless the SOMD and the beryllium-associated worker reach an agreement that is consistent with the recommendations of at least one of the other two physicians.

(d) *Alternate physician determination.* The responsible employer and the beryllium-associated worker or the worker's designated representative may agree upon the use of any alternate form of physician determination in lieu of the multiple physician review process provided by paragraph (c) of this section, so long as the alternative is expeditious and at least as protective of the worker.

(e) *Written medical opinion and recommendation.* (1) Within two weeks of receipt of results, the SOMD must provide to the responsible employer a written, signed medical opinion for each medical evaluation performed on each beryllium-associated worker. The written opinion must take into account the findings, determinations and recommendations of the other examining physicians who may have examined the beryllium-associated worker. The SOMD's opinion must contain:

(i) The diagnosis of the worker's condition relevant to occupational exposure to beryllium, and any other medical condition that would place the worker at increased risk of material impairment to health from further exposure to beryllium;

(ii) Any recommendation for removal of the worker from DOE beryllium activities, or limitation on the worker's activities or duties or use of personal protective equipment, such as a respirator; and

(iii) A statement that the SOMD or examining physician has clearly ex-

plained to the worker the results of the medical evaluation, including all tests results and any medical condition related to beryllium exposure that requires further evaluation or treatment.

(2) The SOMD's written medical opinion must not reveal specific records, findings, and diagnoses that are not related to medical conditions that may be affected by beryllium exposure.

(f) *Information provided to the beryllium-associated worker.* (1) The SOMD must provide each beryllium-associated worker with a written medical opinion containing the results of all medical tests or procedures, an explanation of any abnormal findings, and any recommendation that the worker be referred for additional testing for evidence of CBD, within 10 working days after the SOMD's receipt of the results of the medical tests or procedures.

(2) The responsible employer must, within 30 days after a request by a beryllium-associated worker, provide the worker with the information the responsible employer is required to provide the examining physician under paragraph (a)(6) of this section.

(g) *Reporting.* The responsible employer must report on the applicable OSHA reporting form beryllium sensitization, CBD, or any other abnormal condition or disorder of workers caused or aggravated by occupational exposure to beryllium.

(h) *Data analysis.* (1) The responsible employer must routinely and systematically analyze medical, job, and exposure data with the aim of identifying individuals or groups of individuals potentially at risk for CBD and working conditions that are contributing to that risk.

(2) The responsible employer must use the results of these analyses to identify additional workers to whom the responsible employer must provide medical surveillance and to determine the need for additional exposure controls.

§ 850.35 Medical removal.

(a) *Medical removal protection.* The responsible employer must offer a beryllium-associated worker medical removal from exposure to beryllium if the SOMD determines in a written

medical opinion that it is medically appropriate to remove the worker from such exposure. The SOMD's determination must be based on one or more positive Be-LPT results, chronic beryllium disease diagnosis, an examining physician's recommendation, or any other signs or symptoms that the SOMD deems medically sufficient to remove a worker.

(1) *Temporary removal pending final medical determination.* The responsible employer must offer a beryllium-associated worker temporary medical removal from exposure to beryllium on each occasion that the SOMD determines in a written medical opinion that the worker should be temporarily removed from such exposure pending a final medical determination of whether the worker should be removed permanently.

(i) In this section, "final medical determination" means the outcome of the multiple physician review process or the alternate medical determination process provided for in paragraphs (c) and (d) of § 850.34.

(ii) If a beryllium-associated worker is temporarily removed from beryllium exposure pursuant to this section, the responsible employer must transfer the worker to a comparable job for which the worker is qualified (or for which the worker can be trained in a short period) and where beryllium exposures are as low as possible, but in no event at or above the action level.

(iii) The responsible employer must maintain the beryllium-associated worker's total normal earnings, seniority, and other worker rights and benefits as if the worker had not been removed.

(iv) If there is no such job available, the responsible employer must provide to the beryllium-associated worker the medical removal protection benefits specified in paragraph (b)(2) of this section, until a job becomes available or for one year, whichever comes first.

(2) *Permanent medical removal.* (i) The responsible employer must offer a beryllium-associated worker permanent medical removal from exposure to beryllium if the SOMD determines in a written medical opinion that the worker should be permanently removed from exposure to beryllium.

(ii) If a beryllium-associated worker is removed permanently from beryllium exposure based on the SOMD's recommendation pursuant to this section, the responsible employer must provide the worker the medical removal protection benefits specified in paragraph (b) of this section.

(3) *Worker consultation before temporary or permanent medical removal.* If the SOMD determines that a beryllium-associated worker should be temporarily or permanently removed from exposure to beryllium, the SOMD must:

(i) Advise the beryllium-associated worker of the determination that medical removal is necessary to protect the worker's health;

(ii) Provide the beryllium-associated worker with a copy of this rule and its preamble, and any other information the SOMD deems necessary on the risks of continued exposure to beryllium and the benefits of removal;

(iii) Provide the beryllium-associated worker the opportunity to have any questions concerning medical removal answered; and

(iv) Obtain the beryllium-associated worker's signature acknowledging that the worker has been advised to accept medical removal from beryllium exposure as provided in this section, and has been provided with the information specified in this paragraph, on the benefits of removal and the risks of continued exposure to beryllium.

(4) *Return to work after medical removal.* (i) The responsible employer, subject to paragraph (a)(4)(ii) of this section, must not return a beryllium-associated worker who has been permanently removed under this section to the worker's former job status unless the SOMD first determines in a written medical opinion that continued medical removal is no longer necessary to protect the worker's health.

(ii) Notwithstanding paragraph (a)(4)(i) of this section, if, in the SOMD's opinion, continued exposure to beryllium will not pose an increased risk to the beryllium-associated worker's health, and medical removal is an inappropriate remedy in the circumstances, the SOMD must fully discuss these matters with the worker and then, in a written determination, may authorize

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the responsible employer to return the worker to his or her former job status. Thereafter, the returned beryllium-associated worker must continue to be provided with medical surveillance under § 850.34 of this part.

(b) *Medical removal protection benefits.*

(1) If a beryllium-associated worker has been permanently removed from beryllium exposure pursuant to paragraph (a)(2) of this section, the responsible employer must provide the beryllium-associated worker:

(i) The opportunity to transfer to another position which is available, or later becomes available, for which the beryllium-associated worker is qualified (or for which the worker can be trained in a short period) and where beryllium exposures are as low as possible, but in no event at or above the action level; or

(ii) If the beryllium-associated worker cannot be transferred to a comparable job where beryllium exposures are below the action level, a maximum of 2 years of permanent medical removal protection benefits (specified in paragraph (b)(2) of this section).

(2) If required by this section to provide medical removal protection benefits, the responsible employer must maintain the removed worker's total normal earnings, seniority and other worker rights and benefits, as though the worker had not been removed.

(3) If a removed beryllium-associated worker files a claim for workers' compensation payments for a beryllium-related disability, then the responsible employer must continue to provide medical removal protection benefits pending disposition of the claim. The responsible employer must receive no credit for the workers' compensation payments received by the worker for treatment related expenses.

(4) The responsible employer's obligation to provide medical removal protection benefits to a removed beryllium-associated worker is reduced to the extent that the worker receives compensation for earnings lost during the period of removal either from a publicly- or employer-funded compensation program, or from employment with another employer made possible by virtue of the worker's removal.

(5) For the purposes of this section, the requirement that a responsible employer provide medical removal protection benefits is not intended to expand upon, restrict, or change any rights to a specific job classification or position under the terms of an applicable collective bargaining agreement.

(6) The responsible employer may condition the provision of medical removal protection benefits upon the beryllium-associated worker's participation in medical surveillance provided in accordance with § 850.34 of this part.

§ 850.36 Medical consent.

(a) The responsible employer must provide each beryllium-associated worker with a summary of the medical surveillance program established in § 850.34 at least one week before the first medical evaluation or procedure or at any time requested by the worker. This summary must include:

(1) The type of data that will be collected in the medical surveillance program;

(2) How the data will be collected and maintained;

(3) The purpose for which the data will be used; and

(4) A description of how confidential data will be protected.

(b) Responsible employers must also provide each beryllium-associated worker with information on the benefits and risks of the medical tests and examinations available to the worker at least one week prior to any such examination or test, and an opportunity to have the worker's questions answered.

(c) The responsible employer must have the SOMD obtain a beryllium-associated worker's signature on the informed consent form found in Appendix A to this part, before performing medical evaluations or any tests.

§ 850.37 Training and counseling.

(a) The responsible employer must develop and implement a beryllium training program and ensure participation for:

(1) Beryllium-associated workers;

(2) All other individuals who work at a site where beryllium activities are conducted.

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(b) The training provided for workers identified in paragraph (a)(1) of this section, must:

(1) Be in accordance with 29 CFR 1910.1200, Hazard Communication;

(2) Include the contents of the CBDPP; and

(3) Include potential health risks to beryllium worker family members and others who may come in contact with beryllium on beryllium workers or beryllium workers' personal clothing or other personal items as the result of a beryllium control failure at a DOE facility.

(c) The training provided for workers identified in paragraph (a)(2) of this section must consist of general awareness about beryllium hazards and controls.

(d) The responsible employer must provide the training required by this section before or at the time of initial assignment and at least every two years thereafter.

(e) The employer must provide re-training when the employer has reason to believe that a beryllium worker lacks the proficiency, knowledge, or understanding needed to work safely with beryllium, including at least the following situations:

(1) To address any new beryllium hazards resulting from a change to operations, procedures, or beryllium controls about which the beryllium worker was not previously trained; and

(2) If a beryllium worker's performance involving beryllium work indicates that the worker has not retained the requisite proficiency.

(f) The responsible employer must develop and implement a counseling program to assist beryllium-associated workers who are diagnosed by the SOMD to be sensitized to beryllium or to have CBD. This counseling program must include communicating with beryllium-associated workers concerning:

(1) The medical surveillance program provisions and procedures;

(2) Medical treatment options;

(3) Medical, psychological, and career counseling;

(4) Medical benefits;

(5) Administrative procedures and workers rights under applicable Workers' Compensation laws and regulations;

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(6) Work practice procedures limiting beryllium-associated worker exposure to beryllium; and

(7) The risk of continued beryllium exposure after sensitization.

§ 850.38 Warning signs and labels.

(a) *Warning signs.* The responsible employer must post warning signs at each access point to a regulated area with the following information:

DANGER
BERYLLIUM CAN CAUSE LUNG DAMAGE
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

(b) *Warning labels.* (1) The responsible employer must affix warning labels to all containers of beryllium, beryllium compounds, or beryllium-contaminated clothing, equipment, waste, scrap, or debris.

(2) Warning labels must contain the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR
SHAKING
CANCER AND LUNG DISEASE HAZARD

(c) Warning signs and labels must be in accordance with 29 CFR 1910.1200, Hazard Communication.

§ 850.39 Recordkeeping and use of information.

(a) The responsible employer must establish and maintain accurate records of all beryllium inventory information, hazard assessments, exposure measurements, exposure controls, and medical surveillance.

(b) Heads of DOE Departmental Elements must:

(1) Designate all record series as required under this rule as agency records and, therefore, subject to all applicable agency records management and access laws; and

(2) Ensure that these record series are retained for a minimum of seventy-five years.

(c) The responsible employer must convey to DOE or its designee all record series required under this rule if the employer ceases to be involved in the CBDPP.

(d) The responsible employer must link data on workplace conditions and health outcomes in order to establish a

basis for understanding the beryllium health risk.

(e) The responsible employer must ensure the confidentiality of all work-related records generated under this rule by ensuring that:

(1) All records that are transmitted to other parties do not contain names, social security numbers or any other variables, or combination of variables, that could be used to identify particular individuals; and

(2) Individual medical information generated by the CBDPP is:

(i) Either included as part of the worker's site medical records and maintained by the SOMD, or is maintained by another physician designated by the responsible employer;

(ii) Maintained separately from other records; and

(iii) Used or disclosed by the responsible employer only in conformance with any applicable requirements imposed by the Americans with Disabilities Act, the Privacy Act of 1974, the Freedom of Information Act, and any other applicable law.

(f) The responsible employer must maintain all records required by this part in current and accessible electronic systems, which include the ability readily to retrieve data in a format that maintains confidentiality.

(g) The responsible employer must transmit all records generated as required by this rule, in a format that protects the confidentiality of individuals, to the DOE Assistant Secretary for Environment, Safety and Health on request.

(h) The responsible employer must semi-annually transmit to the DOE Office of Epidemiologic Studies within the Office of Environment, Safety and Health an electronic registry of beryllium-associated workers that protects confidentiality, and the registry must include, but is not limited to, a unique identifier, date of birth, gender, site, job history, medical screening test results, exposure measurements, and results of referrals for specialized medical evaluations.

§ 850.40 Performance feedback.

(a) The responsible employer must conduct periodic analyses and assessments of monitoring activities, haz-

ards, medical surveillance, exposure reduction and minimization, and occurrence reporting data.

(b) To ensure that information is available to maintain and improve all elements of the CBDPP continuously, the responsible employer must give results of periodic analyses and assessments to the line managers, planners, worker protection staff, workers, medical staff, and labor organizations representing beryllium-associated workers who request such information.

APPENDIX A TO PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM INFORMED CONSENT FORM

I, _____ have carefully read and understand the attached information about the Be-LPT and other medical tests. I have had the opportunity to ask any questions that I may have had concerning these tests.

I understand that this program is voluntary and I am free to withdraw at any time from all or any part of the medical surveillance program. I understand that the tests are confidential, but not anonymous. I understand that if the results of any test suggest a health problem, the examining physician will discuss the matter with me, whether or not the result is related to my work with beryllium. I understand that my employer will be notified of my diagnosis only if I have a beryllium sensitization or chronic beryllium disease. My employer will not receive the results or diagnoses of any health conditions not related to beryllium exposure.

I understand that, if the results of one or more of these tests indicate that I have a health problem that is related to beryllium, additional examinations will be recommended. If additional tests indicate I do have a beryllium sensitization or CBD, the Site Occupational Medical Director may recommend that I be removed from working with beryllium. If I agree to be removed, I understand that I may be transferred to another job for which I am qualified (or can be trained for in a short period) and where my beryllium exposures will be as low as possible, but in no case above the action level. I will maintain my total normal earnings, seniority, and other benefits for up to two years if I agree to be permanently removed.

I understand that if I apply for another job or for insurance, I may be requested to release my medical records to a future employer or an insurance company.

I understand that my employer will maintain all medical information relative to the tests performed on me in segregated medical files separate from my personnel files, treated as confidential medical records, and used

or disclosed only as provided by the Americans with Disability Act, the Privacy Act of 1974, or as required by a court order or under other law.

I understand that the results of my medical tests for beryllium will be included in the Beryllium Registry maintained by DOE, and that a unique identifier will be used to maintain the confidentiality of my medical information. Personal identifiers will not be included in any reports generated from the DOE Beryllium Registry. I understand that the results of my tests and examinations may be published in reports or presented at meetings, but that I will not be identified.

I consent to having the following medical evaluations:

// Physical examination concentrating on my lungs and breathing
 // Chest X-ray
 // Spirometry (a breathing test)
 // Blood test called the beryllium-induced lymphocyte proliferation test or Be-LPT
 // Other test(s). Specify:

 Signature of Participant:

Date: _____

I have explained and discussed any questions that the employee expressed concerning the Be-LPT, physical examination, and other medical testing as well as the implications of those tests.

 Name of Examining Physician:

 Signature of Examining Physician:

Dated: _____

PART 852—GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS

Sec.

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AUTHORITY: 42 U.S.C. 7384, *et seq.*; 42 U.S.C. 2201 and 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

SOURCE: 67 FR 52853, Aug. 14, 2002, unless otherwise noted.

§ 852.1 What is the purpose and scope of this part?

(a) This part implements Part D of the Act by establishing the procedures under which:

(1) An individual may obtain and submit an application to the Program Office for review and assistance;

(2) The Program Office processes and submits eligible applications to a Physician Panel;

(3) Physician Panels determine whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility;