

§ 850.35

10 CFR Ch. III (1-1-05 Edition)

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 explained 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 med-

ical 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 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.

§ 850.36

(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.

10 CFR Ch. III (1-1-05 Edition)

§ 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.

(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 retraining 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: