

DEPARTMENT OF PUBLIC SAFETY
COLORADO STATE PATROL
RULES AND REGULATIONS CONCERNING
CLAIMS FOR REIMBURSEMENT FOR THE COSTS OF
RESPONSE AND MITIGATION OF HAZARDOUS SUBSTANCE INCIDENTS

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Under §29-22-104 (6) (A), CRS, the Executive Director of the Colorado Department of Public Safety will promulgate rules creating a process by which a public entity, political subdivision of the state, or unit of local government claiming reimbursement according to this statutory section must and can establish that costs attributed to a hazardous substance incident are reasonable, necessary, and documented.

Under §29-22-104 (6) (B), CRS, the Executive Director of the Colorado Department of Public Safety will further promulgate rules and regulations to create a process by which the parties involved in a dispute related to reimbursement of a response to a hazardous substance incident may access and receive assistance from qualified and knowledgeable persons able to perform the role of a voluntary ombudsman, mediator, or arbitrator to resolve disputed claims.

These rules are being amended as a consequence of a routine annual department rule review assessing these rules' continued viability, applicability, accuracy, and effectiveness. As a consequence of this review, the changes proposed to these rules include:

- Updated federal website and document reference information relevant to the calculation of reimbursable expenses resulting from hazardous incident response;
- Updated formatting to resolve incongruities in section and paragraph titling and numbering; and
- Corrections to grammar and updating of verbiage to improve the overall clarity of these rules, not affecting their existing interpretation or changing their substantive content.

It has been declared by the General Assembly that the creation and establishment of these processes supporting hazardous incident response reimbursement claims is a matter of statewide concern. The absence of rules to carry out the purpose of these statutes is contrary to the peace, health, safety, and welfare of the citizens of Colorado. For these reasons, it is necessary that these rules, as here amended, be adopted.

Stan Hilkey, Executive Director
Colorado Department of Public Safety

Date of Adoption

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PART I
GENERAL STATEMENTS

- 1.0. AUTHORITY TO ADOPT RULES AND REGULATIONS.** Pursuant to §29-22-104 (6) (A), CRS, the Executive Director of the Colorado Department of Public Safety (CDPS) is authorized to adopt rules and regulations establishing a process through which a public entity, political subdivision of the state, or unit of local government may claim reimbursement of reasonable, necessary, and documented response and/or mitigation costs attributable to a hazardous substance incident. The Executive Director is further authorized by §29-22-104 (6) (B), CRS, to establish access to qualified persons to assist in the mediation or arbitration of dispatched hazardous incident response claims.
- 1.1. APPLICABILITY.** These rules and regulations ~~APPLY~~ are applicable to all public entities, ~~STATE~~ political subdivisions of this state, and/or units of local government. These rules apply to the submission of reimbursement claims arising out of submission of reimbursement claims ~~submission of reimbursement claims~~ arising out of response and mitigation of hazardous materials incidents where the Colorado State Patrol (CSP) is the Designated Emergency Response Authority (DERA) as defined within §29-22-102, CRS, ~~pursuant~~ **ACCORDING** to the provisions of §29-22-104, CRS.
- 1.2. DEFINITIONS.** Unless otherwise specified, the definitions provided in §29-22-101 (2), CRS, apply to these rules. The following definitions are also applicable:
- 1.2.1. COSTS:** Means the amount of money and/or damages related to hazardous substance incident response and mitigation activities. Costs may be direct or indirect.
- 1.2.2. DIRECT COSTS:** Include those costs specifically incurred as a result of responding to and/or ~~mitigation~~ **MITIGATING** of a hazardous substance incident. Direct costs may include use/damage; vehicle use and/or damage; expenditure of response/mitigation supplies; use of contract services; laboratory testing; and disposal and/or storage of hazardous materials/substances.
- 1.2.3. DEPARTMENT:** Means the Colorado Department of Public Safety (CDPS).
- 1.2.4. DESIGNATED EMERGENCY RESPONSE AUTHORITY (DERA):** Has the same meaning as set forth within §29-22-102, CRS.
- 1.2.5. DIRECTOR:** Means the Executive Director of the Colorado Department of Public Safety (CDPS).

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- 1.2.6. **INDIRECT COSTS:** Include costs resulting from responding to a hazardous substance incident that are not considered direct costs. Indirect costs may include clerical, accounting, and legal services; report preparation costs; hazardous substance incident planning; and those costs arising out of subsequent processing or resolution of a claim for hazardous response incident reimbursement.
- 1.2.7. **RESPONSIBLE PARTY:** Means the person having care, custody, and/or control of a hazardous substance at the time it is involved in a hazardous substance incident.

PART II

HSCR 2.0: **HAZARDOUS SUBSTANCE INCIDENT RESPONSE DOCUMENTATION.** Responding agencies must provide to the Hazardous Materials Training and Response Section of the CSP, hereinafter the CSP Hazardous Materials Section, written documentation of any hazardous substance incident response and/or mitigation activity. This written documentation must include, at A minimum:

- 2.1.1. The date, time, and location of the hazardous substance incident;
- 2.1.2. Identification of the hazardous substance(s);
- 2.1.3. Identification of the DERA and all other private or public agencies present at the scene of the incident;
- 2.1.4. A summary describing the incident and all mitigation activity performed by the responding agency;
- 2.1.5. The type and number of response personnel involved;
- 2.1.6. The type and number of response vehicles involved; and
- 2.1.7. The type of equipment used in response to the hazardous substance incident.

PART III

HSCR 3.0: ~~**ESTABLISHING REIMBURSABLE COSTS.**~~ Eligible reimbursement costs may include direct and/or indirect costs as each costs are identified within the definitions of these rules. Regardless of costs being direct or indirect, all claims requesting reimbursement of costs resulting from A response to a hazardous substance incident must be in writing.

- 3.1.1. **CALCULATION OF DIRECT COSTS.** When calculating hazardous substance incident reimbursement claims for direct costs, agencies should include in the written claim the following information, as each ~~is applicable~~ **APPLIES** to the incident:
 - 3.1.1.1. The actual hourly rate for personal salaries (regular and/or overtime);
 - 3.1.1.2. The actual cost of expended supplies;

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- 3.1.1.3. The actual cost to replace or repair equipment (not vehicles) used during a response to a hazardous substance incident;
 - 3.1.1.4. An amortization/depreciation schedule for vehicles involved or the Federal Emergency Management Agency (FEMA) schedule of equipment rates ~~set forth~~ **OUTLINED** in 44 CFR 206.228;
 - 3.1.1.5. A reimbursement rates schedule for expenses incurred by the CSP when responding to or mitigating hazardous substance incidents referencing applicable FEMA schedule rates together with applicable, averaged CSP costs is available upon request. The CSP Hazardous Materials Section will update this schedule biannually.
- 3.1.2. **CALCULATION OF INDIRECT COSTS.** When calculating claims for indirect costs arising out of response to a hazardous substance incident, responding agencies may calculate indirect costs:
- 3.1.2.1. Using a formula ~~current~~**LY** in use by the responding agency to calculate indirect costs; or
 - 3.1.2.2. By electing a standard calculation for indirect costs that equal up to 10% of the total direct costs being claimed by the responding agency.

PART IV

HSCR 4.0: CLAIMS PROCESSING.—Claims for reimbursement must be submitted to the party responsible as soon as possible after a hazardous substance incident site is declared safe by the DERA.

- ~~4.1.1.~~**4.0.1.** All communications from an agency claiming reimbursement for response to a hazardous substance incident to a responsible party must be in writing. The initial delivery of a claim for reimbursement claim from an agency to a responsible party must be by certified mail.

PART V

HSCR 5.0: DISPUTE RESOLUTION.—The Director will maintain a list of qualified persons available to perform as volunteer ombudsmen, mediators, or arbitrators to resolve disputes related to hazardous substance incident response claims. This list is available upon a written request addressed to the Director or his or her designee.

- 5.1.1. Persons volunteering to act as ombudsmen, mediators, or arbitrators for disputes related to hazardous substance incident response reimbursement claims must meet the qualifications identified within §29-22-104 (6) (B), CRS.

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- 5.1.2. Parties who become subject to dispute resolution consistent with §29-22-104 (6) (B), CRS, may either enter into such agreements or understandings as may be necessary to resolve a hazardous substance incident response reimbursement claim.

PART VI

HSCR 6.0: DERA REPORTING RESPONSIBILITIES. Pursuant to §29-22-102 (3) (a) and (b), CRS, the designation of a DERA to respond to hazardous substance incidents occurring within the corporate limits of a town, city, city and county, or within unincorporated areas of a county must be reported annually to the CSP Hazardous Materials Section. Annually reported DERA designation information should be submitted to the CSP Hazardous Materials Section electronically at dera@state.co.us.

PART VII

HSCR 7.0: PUBLICATIONS AND RULES INCORPORATED BY REFERENCE. All publications and rules referred to in these regulations are on file and available for public inspection by contacting the CSP Hazardous Materials Section, 15065 S. Golden Road, Golden, CO., 80401.

- 7.1.1. All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules will be provided to and made available for examination at any state publications depository library as required by §24-4-103 (12.5), CRS. The following publications, standards, guidelines, and rules are adopted as amended within these rules in accordance **CONSISTENT** with §24-4-103 (12.5), CRS:
- 7.1.1.1. Federal Emergency Management Agency, Department of Homeland Security, 44 CFR §206.228 (~~2009~~**2021**). The amortization/depreciation schedule of equipment rates is available online through the FEMA website at: <HTTPS://WWW.FEMA.GOV/ASSISTANCE/PUBLIC/SCHEDULE-EQUIPMENT-RATES>.
- 7.1.2. The CSP Hazardous Materials Section will maintain copies of the complete texts of any referenced publications, standards, guidelines, and rules and will make such documents available for public inspection during regular business hours.
- 7.1.2.1. Interested parties may access any referenced publications, standards, guidelines, or rules free of charge online as indicated in ~~section~~ **PART 7.1.1.** of these rules.
- 7.1.2.2. Interested parties may also inspect any referenced materials and/or obtain copies ~~for~~**OF** the adopted standards for a reasonable fee by first contacting the CSP Central Records Unit (CRU) at 700 Kipling St., Lakewood, CO., 80215. Copies

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of any adopted publications, standards, guidelines, and rules may also be available ~~form~~ FROM the organization of original Ppublication:

7.1.2.2.1. Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS). Amortization/Depreciation Schedule for Equipment Rates (~~2009-2021~~). 500 C₇ St., SW, Washington, DC 20472. Phone: 1-800-624-3362. This schedule may also be found online at [HTTPS://WWW.FEMA.GOV/ASSISTANCE/PUBLIC/SCHEDULE-EQUIPMENT-RATES](https://www.fema.gov/assistance/public/schedule-equipment-rates).

7.1.3. These rules do not include later amendments to or editions of any publications, standards, guidelines, or rules incorporated by reference herein.

7.1.4. These rules are available online through the CSP Hazardous Materials section webpage at [HTTPS://WWW.COLORADO.GOV/PACIFIC/CSP/HAZARDOUSMATERIALS](https://www.colorado.gov/pacific/csp/hazardousmaterials) [HTTPS://CSP.COLORADO.GOV/SERVICES-WE-PROVIDE/HAZARDOUS-MATERIALS](https://csp.colorado.gov/services-we-provide/hazardous-materials) and through the CDPS Rulemaking INFORMATION webpage, [HTTPS://PUBLICSAFETY.COLORADO.GOV/GET-INVOLVED/RULES-AND-REGULATIONS](https://publicsafety.colorado.gov/get-involved/rules-and-regulations). All contact with the CSP regarding these rules or their applicability should be addressed to:

COLORADO STATE PATROL, HAZARDOUS MATERIALS SECTION
15065⁷, S. Golden Rd.
Golden, CO., 80401⁷
303-273-1900

PART VIII

HSCR 8.0: SEVERABILITY. If any provision of these rules or the application thereof to any person or circumstance is determined to be unlawful or invalid, the remaining provisions of these rules will not be affected absent a specific reference.