

**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**

Pursuant to §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 pursuant to this section must establish that costs attributed to a hazardous substance incident are reasonable, necessary, and documented.

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

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

- Updates to websites applicable to federal and state information;
- Updates to the formatting of these rules in their entirety, introducing section and subparagraph titles and formatting elements consistent with general rule formatting recommendations and guidance from the Colorado Secretary of State;
- Updates to existing definitions applicable to these rules;
- Updates regarding the process of requesting copies of documents, referencing the Colorado State Patrol Central Records Unit; and
- Introducing a severability clause into these rules.

It has been declared by the General Assembly that the creating and establishing of these processes for hazardous incident response reimbursement claims is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes is contrary to the peace, health, safety, and welfare of the citizens of Colorado. For these reasons, it is necessary that these rule amendments be adopted.

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Stan Hilkey, Executive Director  
Colorado Department of Public Safety

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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 are applicable to all public entities, 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 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 to the provisions of §29-22-104, CRS.

**1.2. DEFINITIONS.** Unless otherwise specified, the definitions provided in §29-22-101 (2), CRS, shall apply to these rules. The following definitions are also applicable:

**1.2.1. A. 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. 1. DIRECT COSTS:** Include those costs specifically incurred as a result of responding to and/or mitigation of a hazardous substance incident. Direct costs may include costs related to personnel salaries (inclusive of benefits); equipment 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. 2. INDIRECT COSTS:** ~~Include costs resulting from responding to a hazardous substance incident that are not considered a direct cost. 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 reimbursement.~~ **B. DEPARTMENT:** Means the Colorado Department of Public Safety (CDPS).
- 1.2.4. C. DESIGNATED EMERGENCY RESPONSE AUTHORITY (DERA):** ~~Shall have~~ **HAS** the same meaning as set forth within §29-22-102, CRS.
- 1.2.5. D. DIRECTOR:** Means the ~~CDPS~~ **EXECUTIVE** Director **OF THE COLORADO DEPARTMENT OF PUBLIC SAFETY (CDPS)**.
- 1.2.6. INDIRECT COSTS:** **INCLUDE COSTS RESULTING FROM RESPONDING TO A HAZARDOUS SUBSTANCE INCIDENT THAT ARE NOT CONSIDERED A 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. E. RESPONSIBLE PARTY:** Means the person or persons having care, custody, and/or control of a hazardous substance at the time it is involved in a hazardous substance incident.

## **PART II**

### **HSCR ~~1-2.0.~~ HAZARDOUS SUBSTANCE INCIDENT RESPONSE DOCUMENTATION.**

~~A.~~ 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. ~~t~~**T**his written documentation must ~~details~~ **INCLUDE**, at 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 23.0: ESTABLISHING REIMBURSABLE COSTS.** ~~A.~~ Eligible reimbursement costs may include direct and/or indirect costs **AS EACH COSTS ARE IDENTIFIED WITHIN THE DEFINITIONS OF THESE RULES**. ~~All claims for direct and/or indirect costs must be in writing~~ **REGARDLESS OF COSTS BEING DIRECT OR INDIRECT**, ~~B.~~ ~~All claims for direct and/or indirect~~ **REQUESTING REIMBURSEMENT OF COSTS RESULTING FROM 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 their written claim the following information, as **EACH IS** applicable **TO THE INCIDENT**:
  - 3.1.1.1. i.** ~~The~~ actual hourly rate for personal salaries (regular and/or overtime);
  - 3.1.1.2. ii.** ~~The~~ actual cost of expended supplies;
  - 3.1.1.3. iii.** ~~The~~ actual cost to replace or repair equipment (not vehicles) used during a response to a hazardous substance incident;
  - 3.1.1.4. iv.** ~~An~~ amortization/depreciation schedule for vehicles **INVOLVED** or the Federal Emergency Management Agency (FEMA) schedule of equipment rates set forth in 44 CFR 206.228;
  - 3.1.1.5. v.** ~~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

~~shall~~ **IS** available **TO THE PUBLIC** upon request. ~~to the public.~~ The CSP ~~Hazardous Materials~~ **S**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 ~~either~~ calculate indirect costs:

**3.1.2.1. i.** ~~Using~~ a formula current in use by the responding agency to calculate indirect costs; or

**3.1.2.2. ii.** ~~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 ~~3~~4.0: CLAIMS PROCESSING.** ~~A.~~ Claims for reimbursement ~~shall~~ **MUST** be submitted to the responsible party **RESPONSIBLE** as soon as possible after a hazardous substance incident site is declared safe by the DERA.

**4.0.1. i.** ~~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.

**HSCR ~~4~~5.0: DISPUTE RESOLUTION.** ~~A.~~ The Director will maintain a list of qualified persons available to perform ~~s~~ volunteer ombudsmen, mediators, or arbitrators to resolve disputes related to ~~these~~ **HAZARDOUS SUBSTANCE INCIDENT RESPONSE** claims. This list ~~will be made~~ **IS** available upon receipt of a written request addressed to the Director or his or her designee.

**5.1.1.** Persons volunteering to act as an ombudsmen, mediators, or arbitrators for disputes related to hazardous substance incident **RESPONSE** reimbursement claims must meet the qualifications ~~listed~~ **IDENTIFIED WITHIN** in §29-22-104 (6) (B), CRS.

**5.1.2. B.** ~~The~~ parties **WHO BECOME SUBJECT** involved in the ~~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 the~~ **HAZARDOUS SUBSTANCE INCIDENT RESPONSE REIMBURSEMENT** ~~the~~ **CLAIM**.

#### **PART VI**

**HSCR 5-6.0: DERA REPORTING RESPONSIBILITIES.** A.—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 ~~will~~ **MUST** be reported annually to the CSP Hazardous Materials Section. ~~B.—Annually reported DERA designation information shall~~ **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.** A.—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. ~~t~~ **The** following publications, standards, guidelines, and rules are adopted as amended within these rules in accordance with §24-4-103 (12.5), CRS:

**7.1.1.1. a—**Federal Emergency Management Agency, Department of Homeland Security, 44 CFR §206.228 (2009). The amortization/depreciation schedule of equipment rates is available online through the FEMA website at:  
**[HTTPS://WWW.FEMA.GOV/ASSISTANCE/PUBLIC/SCHEDULE-EQUIPMENT-RATES.FEMA.GOV/MEDIA-LIBRARY-DATA/1444398992310B45F4EE2503909C4550ECD20/2015EQUIPMENTRATES508.PDF.](https://www.fema.gov/assistance/public/schedule-equipment-rates)**

**7.1.2.** The CSP Hazardous Materials Section ~~shall~~ **WILL** maintain copies of the complete texts of ~~each~~ **ANY REFERENCED** ~~aforementioned~~ publications, standards, guidelines, and rules and will make ~~them~~ **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** ~~these documents~~ free of charge online **AS INDICATED WITHIN SECTION 7.01 OF THESE RULES.**

**7.1.2.2.** Interested parties may also inspect ~~the~~ **ANY** ~~referenced~~ ~~incorporated~~ materials and/or obtain copies for the adopted standards for a reasonable fee by **FIRST** contacting the **CSP CENTRAL RECORDS UNIT (CRU) AT 700 KIPLING ST., LAKEWOOD CO., 80215** ~~15065 S. Golden Rd., Golden CO., 80401.~~ Copies of ~~the~~ **ANY** adopted publications, standards, guidelines, and rules may also be available from the organization of original issue **PUBLICATION.:**

**7.1.2.2.1.** ~~a~~—Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).  
**AMORTIZATION/DEPRECIATION SCHEDULE FOR EQUIPMENT RATES (2009). 500 C, ST., SW, WASHINGTON, DC 20472. PHONE: 1-800-621-3362. THIS SCHEDULE MAY ALSO BE FOUND ONLINE AT <HTTPS://WWW.FEMA.GOV/ASSISTANCE/PUBLIC/SCHEDULE-EQUIPMENT-RATES>.**

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

**7.1.4.** ~~C~~—These rules are available online through the CSP Hazardous Materials Section webpage at **<HTTPS://WWW.COLORADO.GOV/PACIFIC/CSP/HAZARDOUSMATERIALS AND THROUGH THE CDPS RULEMAKING WEBPAGE>**, **<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  
15065, S. Golden Rd.  
Golden, CO., 80401  
303-273-1900

**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.**