

**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 shall 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 shall also promulgate rules and regulations creating 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 reimbursement of costs 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 and effectiveness of these rules. As a consequence of this review, minor corrections, including grammatical errors that are being addressed.

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

Stan Hilkey, Executive Director
Colorado Department of Public Safety

Date of Adoption

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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 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 disputed hazardous incident response claims.

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 response and mitigation of hazardous substance 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.

DEFINITIONS

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

- 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. 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.
 - 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).
- C. DESIGNATED EMERGENCY RESPONSE AUTHORITY (DERA):** Shall have the same meaning as set forth within §29-22-102, CRS.
- D. DIRECTOR:** Means the CDPS Director.
- 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.

HSCR 1: HAZARDOUS SUBSTANCE INCIDENT RESPONSE DOCUMENTATION

- A.** Responding agencies must provide to the hazardous materials training and response section of the CSP written documentation of any hazardous substance incident response and/or mitigation activity which details, at minimum:
 - 1. The date, time and location of the hazardous substance incident;
 - 2. Identification of the hazardous substance;
 - 3. Identification of the DERA and all other agencies present at the scene of the incident;
 - 4. A summary describing the incident and all mitigation activity performed by the responding agency;
 - 5. The type and number of response personnel;
 - 6. The type and number of response vehicles; and
 - 7. The type of equipment used.

HSCR 2: ESTABLISHING REIMBURSABLE COSTS

- A.** Eligible reimbursement costs may include direct and/or indirect costs.
- B.** All claims for direct and/or indirect costs must be in writing.

1. When calculating reimbursement claims for direct costs, agencies should include in their written claim the following information, as applicable:
 - i. The actual hourly rate for personnel salaries (regular and/or overtime);
 - ii. The actual cost of expended supplies;
 - iii. The actual cost to replace or repair equipment (not vehicles) used during response to a hazardous substance incident;
 - iv. An amortization/depreciation schedule for vehicles or the Federal Emergency Management Agency (FEMA) schedule of equipment rates set forth in 44 CFR 206.228.
2. When calculating claims for indirect costs, responding agencies may either calculate indirect costs:
 - i. Using a formula currently in use by the responding agency to calculate indirect costs; or
 - ii. By electing a standard calculation for indirect costs that equals up to 10% of the total direct costs being claimed by the agency.

HSCR 3: CLAIMS PROCESSING

- A. Claims for reimbursement shall be submitted to the responsible party as soon as possible after a hazardous substance incident site is declared safe by the DERA.
 1. All communications from **AN** agency claiming reimbursement for response to a hazardous substance incident to a responsible party must be in writing.
 - i. The initial delivery of a reimbursement claim from an agency to a responsible party must be by certified mail.

HSCR 4: DISPUTE RESOLUTION

- A. The Director will maintain a list ~~, available upon written request,~~ of qualified persons available to perform as volunteer ombudsmen, mediators or arbitrators to resolve disputes related to these claims. **THIS LIST WILL BE MADE AVAILABLE UPON RECEIPT OF A WRITTEN REQUEST.**
 1. Persons volunteering to act as an ombudsmen, mediators or arbitrators for disputes related to hazardous substance incident reimbursement claims must:
 - i. Meet the qualifications listed in §29-22-104 (6) (B), CRS.

- B. The parties involved in the dispute resolution may enter into such agreements or understandings as may be necessary to resolve the claim.

HSCR 5: DERA REPORTING RESPONSIBILITIES

- A. Pursuant to §29-22-102 (3) (a) and (b), CRS, the designation of a DERA to respond to substance incidents occurring within the corporate limits of a town, city, city and county or within unincorporated areas of a county will be reported annually to the CSP Hazardous Materials Section.
- B. Annually reported DERA designation information shall be submitted to the CSP Hazardous Materials Section electronically at DERA@STATE.CO.US.

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 Officer-In-Charge of the Colorado State Patrol Hazardous Materials Section, 15065 South Golden Road, Golden, CO 80401.

This rule does not include later amendments to or editions of materials incorporated by reference. All publications and rules adopted and incorporated by reference in these regulations may be examined at any state publications depository library. All rules and regulations are available on the Department's web site: <http://CDPSWEB.STATE.CO.US>.