

**DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF THE EXECUTIVE DIRECTOR**

**RULES AND REGULATIONS  
CONCERNING  
CLAIMS FOR REIMBURSEMENT FOR THE COSTS OF  
HANDLING HAZARDOUS SUBSTANCE INCIDENTS**

**STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE**

Pursuant to 29-22-104(6)(a), C.R.S., the Executive Director of the Colorado Department of Public Safety shall promulgate rules and regulations creating a process by which a public entity, political subdivision of the state, or unit of local government claiming reimbursement pursuant to this section shall establish that the costs attributed to a hazardous substance incident are reasonable, necessary, and documented. Pursuant to 29-22-104(6)(b), C.R.S., 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 arrange for the assistance of persons on the list of qualified and knowledgeable persons willing to perform the role of voluntary ombudsman, mediator, or arbitrator to resolve disputes regarding claims for reimbursement.

Amendments to these rules are necessary to streamline the reimbursement process by changing document submission time frames, document data required, offering an alternative to the substantiating of costs.

It was 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 public health, peace, safety and welfare of the state. For these reasons, it is imperatively necessary that these new rules be adopted.

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Joe Morales, Executive Director  
Colorado Department of Public Safety

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Date of Adoption

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**AUTHORITY TO ADOPT RULES AND REGULATIONS**

The Executive Director of the Colorado Department of Public Safety is authorized by the provisions of §29-22-104(6)(a), C.R.S., and §29-22-104(6)(b), C.R.S., to adopt rules and regulations creating a process by which a public entity, political subdivision of the state, or unit of local government claiming reimbursement pursuant to this section shall establish costs attributed to a hazardous substance incident that are reasonable, necessary, and documented; and to establish a process and procedures by which the parties involved in a dispute may access and arrange for the assistance of a qualified person to mediate/arbitrate the dispute.

**DEFINITIONS**

The definitions provided in § 29-22-101(2), C.R.S., shall apply to these rules and regulations. The following additional definitions shall also apply:

**“Executive Director”** means the Executive Director of the Colorado Department of Public Safety.

**“Department”** means the Colorado Department of Public Safety.

**“Costs”** means those costs resulting from actions taken to remove, contain, or otherwise mitigate the effects of a hazardous substance incident.

**“Temporary Committee”** means the Temporary Committee on Reimbursement for the Costs of Hazardous Substance Incidents and established under the provisions of §29-22-104(5)(A)(I), C.R.S.

**APPLICABILITY**

These rules and regulations shall apply to all public entities, political subdivisions of the state, or units of local government claiming reimbursement for the costs relating to responding to a hazardous substance incident pursuant to the provisions of §29-22-104, C.R.S.

## HSCR 1

### ESTABLISHING COSTS

- A. All claims for the reimbursement of costs associated with the response to a hazardous substance incident shall be determined according to the process provided herein.
- B. Assessment of claims for reimbursement costs for the response to a hazardous substance incident shall be applied in a fair and impartial manner, so as not to discriminate against any public or private entity.
- C. Costs may include both *direct* and *indirect* costs.
- D. *Direct* costs shall be the *actual* costs for those cost factors that are determined to be appropriate. Consistent with authority granted under the provisions of §29-22-104(6)(A), C.R.S., and the recommendations of the Temporary Committee, the Director, after recognizing that the cost differences between rural and urban areas and the cost differences between paid staff and volunteers could be reflected by using both the direct and indirect cost method and that no special provisions needed to be made for them, determined that the following cost factors are appropriate:
  - 1. Personnel salaries, including benefits
  - 2. Actual supplies expended
  - 3. Vehicles
  - 4. Equipment
  - 5. Contracted services
  - 6. Laboratory testing
  - 7. Disposal of materials
  - 8. Storage of materials
- E. All costs identified in a claim for reimbursement of costs shall be required to meet the required standards of *reasonable*, *documented*, and *necessary*.
- F. Actual costs for resources and services shall be determined by an accepted and validated accounting method that clearly demonstrates how the cost was calculated, such as:
  - 1. The actual hourly rate for salaries (regular and/or overtime).
  - 2. The actual cost of replacement or repair.
  - 3. An amortization or depreciation schedule.

or, as an alternative:

- 1. The Federal Emergency Management Agency schedule of equipment rates

may be used in lieu of the above, where appropriate.

- G. Costs shall be based on the actual supplies and other expendable items used during the incident. For example, if an incident requires the use of only 25% of a product then the cost shall be based on that 25%, not the cost to replace 100% of the product.
- H. *Indirect* costs are incurred as a result of a response to a hazardous substance incident and the subsequent processing of a claim for the reimbursement of costs associated with it. These include *indirect* costs for clerical, accounting, and legal services, as well as costs for preparation and planning. Therefore, a claim for reimbursement of costs may include an *indirect* cost calculation based on an existing formula currently used by the agency or an amount not to exceed 10% of the total *direct* costs claimed.
- I. An agency or entity shall provide evidence that substantiates that costs claimed for the replacement of equipment are legitimate and based on an actual loss resulting from the hazardous substance incident for which the claim is submitted.
- J. All claims shall be collected and distributed consistent with the provisions of Title 29, Article 22, of Colorado Revised Statutes.
- K. All other claims for the reimbursement of costs for services and resources not otherwise identified herein may be pursued subject to the provision of §29-22-105, C.R.S.

## **HSCR 2**

### **DOCUMENTATION**

- A. Any agency or entity that submits a claim for reimbursement of costs shall complete the Colorado Department of Public Safety's Claim for Reimbursement of Costs Cover Sheet (Form CDPS 400). The completed cover sheet must be signed and included with the other documents being submitted as part of the claim to the responsible party or their agent.
- B. An agency or entity may submit a claim using documents and records that are part of an established claims process within their organization. Otherwise, they may use the claims packet provided by the Department and made available on Department's Web Site.
- C. The content of documents submitted in support of a claim for reimbursement of costs shall be detailed and complete. As a minimum, they shall contain sufficient detailed information to enable the responsible party or their agent to determine whether the claim meets the standards specified in Rule HSCR 1(D).

- D. Documents submitted to a responsible party or their agent in support of a claim for cost reimbursement shall as a minimum include the following records:
1. A detailed narrative report describing the incident, response actions, resolution, and any follow-up actions;
  2. An itemized record of the allowable costs claimed, including a description of the resource or service;
  3. A description of formulas, or other accepted accounting methods, used to calculate the allowable costs;
  4. A copy of the appropriate part(s) of the agency's response plan, as required by the provisions of NFPA 472 (Part 5), OSHA 1910.120, and EPA Part 311;
  5. Personnel time sheets, receipts, invoices, and any other documents that would provide justification for the allowable costs being claimed, and,
  6. Any other documents deemed appropriate to assist in determining whether the claimed costs meet the standards of reasonable, documented, and necessary.
- E. An agency or entity submitting claims for cost reimbursement shall ensure that following specific information is also provided within the documents supporting the claim. This information is required to provide details necessary to enable the responsible party or their agent to process a claim in a timely manner:
1. The name of the agency or entity that dispatched the original incident notification.
  2. The identity of the Designated Emergency Response Authority.
  3. The identity and role of all assisting agencies on-scene.
  4. A statement as to why the claim is reasonable and necessary.
  5. A statement as to whether the appropriate response plans were followed, with an explanation if there was any need to deviate from those plans.
- F. If it is not practical due to a legitimate reason for an agency or entity to provide a copy of specific documents required under the provisions of this Rule HSCR 2, the responsible party or their agent shall be notified as to where they can view and/or obtain the required documents.

## **HSCR 3**

### **CLAIMS PROCESSING**

- A. Claims for reimbursement of costs shall be submitted to the responsible party or their agent no later than 60 days following the date the incident scene is declared safe by the Designated Emergency Response Authority (DERA), or other response authority having primary responsibility for the incident.
- B. A responsible party or their agent shall, within the 60 days following the date of receipt of a claim for cost reimbursement, notify the claimant in writing of their intent to settle the claim in full or seek dispute resolution pursuant to HSCR 4.
- C. All the parties involved in a claim for reimbursement of costs shall make a good faith effort to process the claim in a timely manner.
- D. All written communications between both the claimant and the responsible party or their agent shall be mailed using recorded delivery.

## **HSCR 4**

### **DISPUTE RESOLUTION**

- A. The Director shall maintain a list of knowledgeable and qualified persons in accordance with the provisions of §29-22-104(6), C.R.S.
- B. Persons who are interested in performing the role of a voluntary ombudsman, mediator, or arbitrator, to resolve disputes involving claims for reimbursement of costs resulting from a hazardous substance incident, shall be selected using the following selection process:
  - 1. Persons who meet the requirements of §29-22-104(6), C.R.S., to be a voluntary ombudsman, mediator or arbitrator, shall submit a written application to the Director.
  - 2. The application shall be in the form of an introductory letter describing why the person believes that they meet the requirements. The application shall also include a resume or other acceptable description of their knowledge, experience, and background.
  - 3. Final selection will be based on a personal interview conducted by the Director or an appointed designee.

- C. Any party who wishes to dispute a claim for reimbursement of costs resulting from a response to a hazardous substance incident may submit a written request to the Director for the assistance of a person on the list. The request shall include a copy of the Form CDPS 400 that pertains to the claim being disputed. The Director shall provide the party requesting assistance with a copy of the list of qualified persons within 5 working days of the receipt of the request. It shall be the responsibility of the party requesting assistance to initiate contact with a qualified person on the list.
- D. The parties involved in the dispute resolution may enter into such agreements or understandings as may be necessary, regarding the process. However, in all aspects the process shall comply with the provisions of the Colorado Uniform Arbitration Act, §13-22-201, C.R.S.
- E. All publications and rules referred to in these regulations are on file and available for public inspection by contacting the officer in charge of Troop 8-C (Hazardous Materials Transport Safety and Response), Colorado Department of Public Safety, Division of State Patrol, 700 Kipling Street, Suite 1000, Denver, Colorado, 80215-5865. This rule does not include later amendments to or editions of any 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. Additionally, all rules and regulations are available on the internet, at the following address: <http://csp.state.co.us/hazard.cfm>.