

**STATE OF KANSAS
BOARD OF HEALING ARTS**

Notice of Public Hearing on Proposed Administrative Regulations

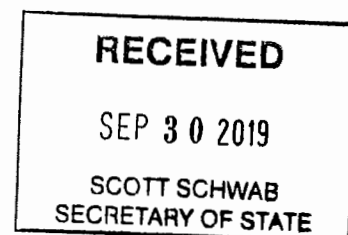
A public hearing will be conducted on Tuesday, December 10, 2019, at 9:30 a.m. in the board room at the Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level – Suite A, Topeka, Kansas, to consider proposed new regulations related to the practice by certified nurse midwives.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the regulations. All interested parties may submit comments prior to the hearing to Tucker Poling, General Counsel, at the Board of Healing Arts at the address above, or via e-mail to KSBHA_HealingArts@ks.gov. All interested parties will be given a reasonable opportunity to present their views, orally or in writing, concerning the proposed new regulations during the public hearing. In order to provide all parties with an opportunity to present their views, it may be necessary to request each participant limit any oral presentations to five minutes.

Copies of the new proposed regulations and the Economic Impact Statement for the new proposed regulations may be obtained from the Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level – Suite A, Topeka, Kansas 66612, on the agency website at <http://www.ksbha.org/publicinformation/publicinformation.shtml>, by contacting Jenne Cook at (785) 296-2482, or by e-mailing the agency at KSBHA_HealingArts@ks.gov.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the new proposed regulations being considered and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Sheila Rice at (785) 296-8558 or at Sheila.Rice@ks.gov. Individuals with hearing and/or speech disabilities may contact the Kansas Relay Center at 800-766-3777 for communication accommodations. Handicapped parking is located on 8th Street and in the building's parking garage. From the street, both the west entrance to the building on Jackson Street and the north entrance on 8th Street are accessible.

A summary of the new proposed regulations and the economic impact follows:



K.A.R. 100-28b-1. Definitions

K.A.R. 100-28b-5. License expiration and cancellation

K.A.R. 100-28b-9. Scope of practice; limitations

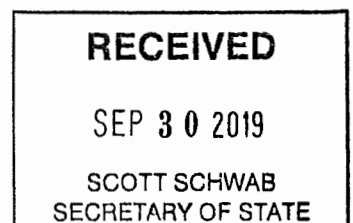
K.A.R. 100-28b-15. Transport and transfer protocol requirements

K.A.R. 100-28b-16. Duty to consult, refer, transfer, and transport

K.A.R. 100-28b-17. Identifiable risks requiring immediate referral and transport of patient

K.A.R. 100-28b-18. Identifiable risks requiring immediate referral and transport of newborn

After having been approved in substance by both the Board of Healing Arts and the Board of Nursing, these regulations have been approved by the Department of Administration, the Department of Budget, and the Attorney General. The purpose of these new proposed regulations is to effectuate the provisions of the Independent Practice of Midwifery Act, K.S.A. 65-28b01, et seq., as required by K.S.A. 65-28b07. They include definitions of key terms used in relevant regulations and statutes, procedures for license expiration and cancellation, scope of practice, requirements for referring or transferring patients, and requirements for various levels of coordination with physicians when necessary. While a qualified economist would be required to provide an expert opinion of the regulations' impact on economic activity and growth, in the lay opinion of agency staff, the regulations enhance business activities by allowing a new and independent practice alternative for midwives in Kansas. (See economic impact statement approved by the Department of Budget).



Article 28b. Independent Practice of Midwifery

K.A.R. 100-28b-1. Definitions. As used in this article of the board’s regulations, each of the following terms shall have the meaning specified in this regulation:

(a) “Abortion” has the meaning specified in K.S.A. 65-6701, and amendments thereto.

(b) “Antepartum” means occurring in the period that commences when a pregnant woman presents herself to a licensee during pregnancy and ends at the onset of labor.

(c) “Approved national certification” means certification as a certified nurse-midwife by the American midwifery certification board.

(d) “Birthing center” means a facility that provides delivery services for normal, uncomplicated pregnancies. This term shall not include a medical care facility as defined by K.S.A. 65-425, and amendments thereto.

(e) “Family planning services” means the provision of contraceptive methods, preconception health services, and sexually transmitted infection screening and treatment to patients.

(f) “Formal consult” means the process whereby a licensee formally requests a physician’s written recommendations for the care and treatment of a patient’s identifiable risks.

(g) “Home birth” means an attended birth at a private residence or a location other than a birthing center or hospital.

(h) “Hospital” has the meaning specified in K.S.A. 65-425, and amendments thereto.

(i) “Identifiable risk” means medical history or clinical signs or symptoms that could require clinical services other than those associated with a normal, uncomplicated pregnancy and a normal, uncomplicated delivery.

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(j) "Informal consult" means the process whereby a licensee who maintains management responsibility for the patient's care informally requests the advice or opinion of a physician.

(k) "Initial care of a normal newborn" means the clinical services provided to a normal newborn during the first 28 days of life. This term shall include lactation services.

(l) "Intrapartum" means occurring in the period commencing with the onset of labor and ending after the delivery of the placenta.

(m) "Licensee" means an individual licensed by the board to engage in the independent practice of midwifery as defined in K.S.A. 65-28b02, and amendments thereto.

(n) "Minor vaginal laceration" means a tear that extends beyond the fourchette, perineal skin, and vaginal mucosa to perineal muscles and fascia, but not the anal sphincter.

(o) "Newborn" means an infant during the first 28 days of life after birth.

(p) "Normal newborn" means a newborn who has been clinically determined to have no complications or to be at low risk of developing complications.

(q) "Normal, uncomplicated delivery" means delivery of a singleton cephalic vaginal birth that has been clinically determined to be at low risk for complications.

(r) "Normal, uncomplicated pregnancy" means a pregnancy that is initially determined to be at a low risk for a poor pregnancy outcome and that remains at a low risk throughout the pregnancy.

(s) "Patient" means a woman to whom an independent certified nurse-midwife provides clinical services.

(t) "Physician" means an individual licensed to actively practice medicine and surgery or osteopathic medicine and surgery in Kansas.

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(u) "Poor pregnancy outcome" means any outcome other than a live, healthy patient.

(v) "Postpartum" means occurring in the period commencing with the delivery of the placenta and ending six weeks after birth.

(w) "Referral" means the process whereby a licensee requests a physician to assume management responsibility for a patient's care.

(x) "Transfer" means the process whereby a licensee or physician accepts management responsibility for a patient's care.

(y) "Transport" means the process whereby a patient is moved from one location to another. (Authorized by K.S.A. 65-28b07(d); implementing K.S.A. 65-28b02 and 65-28b07(d); effective P-_____.)

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K.A.R. 100-28b-5. License expiration and cancellation. (a) Each license to engage in the independent practice of midwifery issued within the seven-month period beginning June 1 and ending December 31 shall expire on September 30 of the following year and shall be cancelled on October 30 of that year, unless renewed.

(b) Each license to engage in the independent practice of midwifery issued within the five-month period beginning January 1 and ending May 31 shall expire on September 30 and shall be cancelled on October 30 of the same year, unless renewed. (Authorized by K.S.A. 65-28b04 and 65-28b07(d); implementing K.S.A. 65-28b04; effective P-_____.)

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K.A.R. 100-28b-9. Scope of practice; limitations. (a) Any licensee may provide clinical services within the scope of practice specified in K.S.A. 65-28b02(c), and amendments thereto, including the following:

- (1) Ordering and interpreting laboratory and diagnostic tests;
- (2) prescribing and administering prescription-only medications, including controlled substances;
- (3) distributing manufacturers' samples of prescription-only medications;
- (4) prescribing the use of medical devices;
- (5) ordering ancillary professional services;
- (6) performing an episiotomy;
- (7) performing the repair of a minor, vulvar, or vaginal laceration;
- (8) performing an uncomplicated circumcision on a male, normal newborn;
- (9) inserting and placing contraceptive devices and removing contraceptive devices;
- (10) routine primary care services that are inherent to antepartum care;
- (11) antepartum care to a patient with a prior cesarean section delivery; and
- (12) lactation services.

(b) The clinical services within the scope of practice specified in K.S.A. 65-28b02(c), and amendments thereto, shall exclude the following:

- (1) Pharmacologic induction or augmentation of labor;
- (2) spinal or epidural anesthesia;
- (3) multiple-gestation pregnancy;
- (4) monocephalic presentation of the fetus at the onset of labor or rupture of membranes;

and

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(5) intrapartum care to a patient with a prior cesarean section delivery. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02 and 65-28b07; effective P-_____.)

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K.A.R. 100-28b-15. Transport and transfer protocol requirements. (a) Each licensee shall have a written protocol in place for each patient for the timely and safe transport to a hospital with an obstetrical unit and physician within a reasonable proximity of the planned location of labor and delivery. Each written protocol shall include the following:

- (1) A plan for transporting the patient by emergency medical services;
- (2) a plan for notification of the hospital and physician;
- (3) a plan for communication of the patient's medical history and present condition; and
- (4) at least one of the following:
 - (A) A plan for transferring the patient to the hospital and a physician;
 - (B) evidence of a transfer agreement with the hospital and physician; or
 - (C) evidence that the licensee has admitting privileges at the specified hospital.

(b) Each licensee shall ensure that all staff members attending the patient's labor and delivery have immediate access to a working telephone or another communication device and to all necessary information for transporting and transferring a patient in case of an emergency.

(Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective P-
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K.A.R. 100-28b-16. Duty to consult, refer, transfer, and transport. (a) A licensee shall immediately informally consult, formally consult, refer, or transfer care of a patient to a physician, or transport the patient to a hospital if the patient's medical history or condition presents identifiable risks to the course of pregnancy, labor, delivery, or health of the patient.

(b) Any licensee may continue or resume providing clinical services to the patient if a physician has determined that the patient's medical history or condition has been resolved, or that the identifiable risks presented by the patient's medical history or condition are not likely to affect the course of pregnancy, labor, delivery, or health of the patient or newborn.

(c) A licensee shall immediately informally consult, formally consult, refer, or transfer care of a newborn to a physician, or transport the newborn to a hospital if at any time the newborn's condition presents identifiable risks to the health of the newborn.

(d) Any licensee may continue or resume providing clinical services to the newborn if a physician has determined that the newborn's condition has been resolved or that the identifiable risks presented by the newborn's condition are not likely to affect the health of the newborn.

(Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective P-
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K.A.R. 100-28b-17. Identifiable risks requiring immediate referral and transport of

patient. Identifiable risks requiring the immediate referral and transport of a patient shall

include the following:

(a) Maternal fever of more than 100.4 degrees Fahrenheit during labor, in the absence of environmental factors;

(b) suggestion of fetal jeopardy, including clinically significant frank bleeding before delivery, abnormal bleeding with or without abdominal pain, evidence of placental abruption, or detection of abnormal fetal heart tones;

(c) current spontaneous preterm labor;

(d) current preterm premature rupture of membranes;

(e) current preeclampsia;

(f) current hypertensive disease of pregnancy;

(g) continuous uncontrolled bleeding;

(h) postpartum bleeding that does not subside with the administration of oxytocin or other antihemorrhagic agent;

(i) delivery injuries to the bladder or bowel;

(j) grand mal seizure;

(k) uncontrolled vomiting;

(l) coughing or vomiting blood;

(m) severe chest pain; and

(n) sudden onset of shortness of breath and labored breathing. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective P-_____.)

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K.A.R. 100-28b-18. Identifiable risks requiring immediate referral and transport of

newborn. Identifiable risks requiring the immediate referral and transport of a newborn shall include the following:

(a) Respiratory rate greater than 80 or grunting, flaring, or retracting following delivery with meconium-stained fluid;

(b) central cyanosis or pallor for more than 10 minutes;

(c) Apgar score of six or less at five minutes of age;

(d) abnormal bleeding;

(e) more than eight hours of continuous postpartum evaluation;

(f) vesicular skin lesions;

(g) seizure-like activity;

(h) poor feeding effort due to lethargy or lack of interest for more than two hours immediately following birth;

(i) temperature less than 96.8 degrees Fahrenheit or greater than 100.4 degrees Fahrenheit documented more than 15 minutes apart;

(j) heart murmur lasting more than 24 hours immediately following birth;

(k) cardiac arrhythmia;

(l) congenital anomalies;

(m) failed critical congenital heart disease screening;

(n) birth injury;

(o) clinical evidence of prematurity, including low birth weight of less than 2,500 grams, smooth soles of feet, or immature genitalia;

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- (p) jaundice in the first 24 hours after birth or significant jaundice at any time;
- (q) no stool for more than 24 hours immediately following birth;
- (r) no urine output for more than 24 hours; and
- (s) development of persistent poor feeding effort at any time. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective P-_____.)

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*Kansas Board of Healing Arts
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785-296-8066
Tucker.Poling@ks.gov*

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

K.A.R. 100-28b-9 (Independent Practice of Midwifery)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt along with the following to the Division of the Budget.

I. Brief description of the proposed rule(s) and regulation(s).

The purpose of these regulations is to effectuate the provisions of the Independent Practice of Midwifery Act, K.S.A. 65-28b01, et seq., as required by K.S.A. 65-28b07.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

Not mandated by the federal government.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

While a qualified economist would be required to provide an expert opinion of the regulations impact on economic activity and growth, in the lay opinion of agency staff, the regulations enhance business activities by allowing a new and independent practice alternative for midwives in Kansas.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

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Although there are routine and expected costs associated with applying for, maintaining, and renewing professional licenses, those implementation and compliance costs are a function of the legislature's decision to enact the Act. The agency is not aware of additional implementation and compliance costs caused by implementing these regulations as mandated by K.S.A. 65-28b07. The licensure fees described in these regulations are at or below those outlined in the statute at K.S.A. 65-28b05. The agency is not aware of implementation and compliance costs to public utility ratepayers or local governments. While a qualified economist would be required to provide an opinion of the regulation's impact on the state economy as a whole, in the lay opinion of agency staff, the regulations enhance business activities by allowing a new and independent practice alternative for midwives in Kansas.

C. Businesses that would be directly affected by the proposed rule and regulation;

Businesses and solo practitioners that include the services of a licensed midwife.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefit of the regulations are that they implement the Act that allows a new and independent practice alternative for midwives in Kansas and provide another option for Kansas patients seeking care and treatment related to a normal and uncomplicated pregnancy and delivery. There is no expected cost associated with the regulations (although, as noted above, there are compliance costs associated with licensure, which is a function of the Act rather than the regulations) other than the usual resource costs associated with the process of promulgating this regulation.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The agency has minimized the cost and impact of the regulations by setting licensing fees generally below those permitting under the Act.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

The agency is not aware of annual implementation cost to these regulations (although, as noted above, there are compliance costs associated with licensure itself, which is a function of the Act rather than the regulations).

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Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES NO

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

See comments above. The basis for the estimates are stated above.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES NO

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

Although the agency does not employ an economist, the agency does not believe these regulations will meaningfully impact the revenue of cities or school districts.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The agency has had extensive discussions with members of the midwifery advisory council as well as the Board of Nursing in regard to these regulations. The agency is complying with all public hearing requirements, including a hearing before the appropriate legislative committee and a public hearing to be held at the agency prior to adoption.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

APPROVED These are not an environmental regulations.

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

K.A.R. 100-28b-1, 100-28b-2, 100-28b-3, 100-28b-4, 100-28b-5, 100-28b-6, 100-28b-7, 100-28b-8, 100-28b-11, 100-28b-12, 100-28b-14, 100-28b-15, 100-28b-16, 100-28b-17, 100-28b-18, 100-28b-19, 100-28b-20 (Independent Practice of Midwifery)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt along with the following to the Division of the Budget.

I. Brief description of the proposed rule(s) and regulation(s).

The purpose of these regulations is to effectuate the provisions of the Independent Practice of Midwifery Act, K.S.A. 65-28b01, et seq., as required by K.S.A. 65-28b07.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

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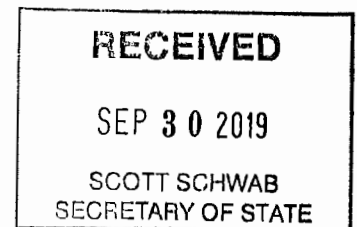
A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

While a qualified economist would be required to provide an expert opinion of the regulations impact on economic activity and growth, in the lay opinion of agency staff, the regulations enhance business activities by allowing a new and independent practice alternative for midwives in Kansas.

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- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

Although there are routine and expected costs associated with applying for, maintaining, and renewing professional licenses, those implementation and compliance costs are a function of the legislature's decision to enact the Act. The agency is not aware of additional implementation and compliance costs caused by implementing these regulations as mandated by K.S.A. 65-28b07. The licensure fees described in these regulations are at or below those outlined in the statute at K.S.A. 65-28b05. The agency is not aware of implementation and compliance costs to public utility ratepayers or local governments. While a qualified economist would be required to provide an opinion of the regulation's impact on the state economy as a whole, in the lay opinion of agency staff, the regulations enhance business activities by allowing a new and independent practice alternative for midwives in Kansas.

- C. Businesses that would be directly affected by the proposed rule and regulation;**

Businesses and solo practitioners that include the services of a licensed midwife.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

The benefit of the regulations are that they implement the Act that allows a new and independent practice alternative for midwives in Kansas and provide another option for Kansas patients seeking care and treatment related to a normal and uncomplicated pregnancy and delivery. There is no expected cost associated with the regulations (although, as noted above, there are compliance costs associated with licensure, which is a function of the Act rather than the regulations) other than the usual resource costs associated with the process of promulgating this regulation.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The agency has minimized the cost and impact of the regulations by setting licensing fees generally below those permitting under the Act.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

The agency is not aware of annual implementation cost to these regulations (although, as noted above, there are compliance costs associated with licensure itself, which is a function of the Act rather than the regulations).

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Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES NO

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

See comments above. The basis for the estimates are stated above.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

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H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The agency has had extensive discussions with members of the midwifery advisory council as well as the Board of Nursing in regard to these regulations. The agency is complying with all public hearing requirements, including a hearing before the appropriate legislative committee and a public hearing to be held at the agency prior to adoption.

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- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

These are not an environmental regulations.

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