

## ARTICLE 5. STATE ENVIRONMENTAL POLICY

### Rule 1. Environmental Assessment; Activities of State Agencies

#### 329 IAC 5-1-1 General authority of board

Authority: IC 13-1-10-3; IC 13-7-7

Affected: IC 13-1-10-3

Sec. 1. (a) IC 13-1-10-3 authorizes and directs that, to the fullest extent possible, all agencies of the state shall include in every recommendation or report on proposals for legislation and other "major state actions significantly affecting the quality of the human environment," a detailed statement on:

- (1) the environmental impact of the proposed action;
- (2) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (3) alternatives to the proposed action;
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (5) any irreversible and irretrievable commitments of resources which would be involved if the proposed actions should be implemented.

(b) IC 13-1-10-3 further provides that the solid waste management board shall by rule define which actions constitute a "major state action significantly affecting the quality of the human environment". (*Solid Waste Management Board; 329 IAC 5-1-1; filed May 31, 1988, 2:42 pm: 11 IR 3523; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

#### 329 IAC 5-1-2 Purpose of rule

Authority: IC 13-1-10-3; IC 13-7-7

Affected: IC 13-1-10-3

Sec. 2. The purpose of this rule (329 IAC 5-1) is to designate which actions are within the scope of IC 13-1-10-3 and in particular which actions constitute a major state action significantly affecting the quality of the human environment, and to provide an environmental assessment form to assist in that determination. (*Solid Waste Management Board; 329 IAC 5-1-2; filed May 31, 1988, 2:42 pm: 11 IR 3523; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

#### 329 IAC 5-1-3 Applicability of rule; exemptions

Authority: IC 13-1-10-3; IC 13-7-7

Affected: IC 13-1-10

Sec. 3. (a) This rule (329 IAC 5-1) applies to all state agencies.

(b) Each agency of the state shall comply with this rule (329 IAC 5-1) unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

(c) IC 13-1-10-7 provides that the "(P)olicies and goals set forth in IC 13-1-10-7 and this rule (329 IAC 5-1) are supplementary to those set forth in existing authorizations of state agencies." Accordingly, each agency shall interpret the provisions of IC 13-1-10-7 and this rule (329 IAC 5-1) as a supplement to its existing authority and as a mandate to view traditional policies in the light of the chapter's (IC 13-1-10) environmental objectives.

(d) Actions covered include but are not limited to:

- (1) agency legislative proposals;
- (2) new and continuing projects and program activities directly undertaken by the agency or supported in whole or in part through state contracts, grants, subsidies, loans or other forms of funding assistance;
- (3) the making, modification, or establishment of rules.

(e) Actions exempted:

- (1) administrative procurements, e.g. general supplies;
- (2) contracts for consulting services;
- (3) personnel actions;
- (4) repair or maintenance of existing structures or facilities involving no expansion;

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(5) basic data collection, research and experimental management and resource evaluation activities which do not result in a significant disturbance to the environment.

(f) Categorical exemptions:

(1) Minor actions. Each agency may submit to the department of environmental management for approval a list of those actions which it considers to be minor in nature and, therefore, categorically exempted. Only those actions on the lists shall be so exempted.

(2) Emergency actions. Those actions necessitated by a sudden unexpected occurrence which demands immediate action to mitigate loss or damage to life, health, property or essential public services shall be exempted.

(g) Statutory exemptions:

(1) The issuance of a license or permit by any agency of the state, as exempted by IC 13-1-10-6.

(2) IC 13-1-10-8 provides "(A)ny state agency that is required by the National Environmental Policy Act (P.L.91-190) to file a federal environmental impact statement shall not be required to file a statement with the state government as provided under sections 3 and 4 (IC 13-1-10-3 and IC 13-1-10-4) of this chapter, unless the action contemplated requires state legislation or state appropriations."

*(Solid Waste Management Board; 329 IAC 5-1-3; filed May 31, 1988, 2:42 pm: 11 IR 3523; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

**329 IAC 5-1-4 General considerations for preparing environmental assessment forms**

Authority: IC 13-1-10-3; IC 13-7-7

Affected: IC 13-1-10

Sec. 4. (a) It is not within the scope of this rule (329 IAC 5-1) to identify before the fact which major state agency actions significantly affect the quality of the human environment. The specific determination must be developed for each agency action by preparation of an environmental assessment as set forth in 329 IAC 5-1-5.

(b) In preparing the assessment both primary and secondary consequences of short term and long term duration should be considered by the agency, since many state actions stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities.

(c) The effect of many state decisions about a project or complex of projects may be individually limited but can be cumulatively considerable in affecting the environment.

(d) A proposed action which is likely to be highly controversial from an environmental standpoint should be considered significant justification for preparation of an environmental impact statement. *(Solid Waste Management Board; 329 IAC 5-1-4; filed May 31, 1988, 2:42 pm: 11 IR 3524; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

**329 IAC 5-1-5 Environmental assessment form**

Authority: IC 13-1-10-3; IC 13-7-7

Affected: IC 13-1-10

Sec. 5. The environmental assessment form:

This form is provided to assist in determining whether a proposed action could have significant adverse effect on the quality of the human environment and thus require an environmental impact statement.

AGENCY \_\_\_\_\_

ADDRESS \_\_\_\_\_

ACTION IDENTIFICATION \_\_\_\_\_

PREDICTED DATES: Commencement \_\_\_\_\_

Completion \_\_\_\_\_

PROJECTED COST \_\_\_\_\_

PREPARING BODY (i.e. Agency, Grantee, Contractor) \_\_\_\_\_

**I. Background Information**

1. Give a brief description of the proposed action(s) and describe how your agency is involved in the action.
2. Describe the geographical area or areas which will be affected by the action(s), including distinguishing natural and

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man-made characteristics and a brief description of the present use of the area or areas.

**II. Assessment of Environmental Impact**

Answer the following questions by placing a check in the appropriate space, consider both short and long term impact. Wherever "Yes" is checked, indicate on the lines below the question the nature of the effect.

- |  | Short<br>Term |     | Long<br>Term |     |
|--|---------------|-----|--------------|-----|
|  | Yes           | No  | Yes          | No  |
| 1. Could the action(s) adversely affect the use of a recreational area or area of important aesthetic value?<br>_____<br>_____   | ___           | ___ | ___          | ___ |
| 2. Are any of the natural or manmade features which may be affected in the area(s) unique, that is, not found in another parts of the state or nation?<br>_____<br>_____ | ___           | ___ | ___          | ___ |
| 3. Could the action(s) adversely affect an historical or archaeological structure or site?<br>_____<br>_____   | ___           | ___ | ___          | ___ |
| 4. Could the action(s) adversely affect fish, wildlife, or plant life?<br>_____<br>_____   | ___           | ___ | ___          | ___ |
| 5. Have any fish, mammals or plant species on the rare or endangered list been sighted in the affected area(s)?<br>_____<br>_____  | ___           | ___ | ___          | ___ |
| Will those sighted be adversely affected?<br>_____<br>_____  | ___           | ___ | ___          | ___ |
| 6. Could the action(s) change existing features of any of the state's fresh waters or wetlands?<br>_____<br>_____  | ___           | ___ | ___          | ___ |
| 7. Could the action(s) change existing features of any of the state's beaches?<br>_____<br>_____   | ___           | ___ | ___          | ___ |

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- 8. Could the action(s) result in the elimination of significant acreage of land presently utilized for agricultural or forestry purposes?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 9. Will the action(s) require certification, authorization or issuance of a permit by any local, state or federal environmental control agency?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 10. Will the action(s) involve the application, use or disposal of potentially hazardous materials?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 11. Will the action(s) involve construction of facilities in a flood plain?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 12. Could the action(s) result in the generation of a significant level of noise?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 13. Could the action(s) result in the generation of significant amounts of dust?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 14. Could the action(s) result in a deleterious effect on the quality of the air?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 15. Could the action(s) result in deleterious effect on the quality or quantity of any portion of the state's water resources? (If yes, indicate whether surface, ground water, offshore.)    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 16. Could the action(s) affect an area of important scenic value?    \_\_\_    \_\_\_    \_\_\_    \_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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17. Could the action(s) result in increased congestion and/or traffic in an already congested area or an area incapable of absorbing increase?     \_\_\_   \_\_\_   \_\_\_   \_\_\_

\_\_\_\_\_

18. Could the action(s) require a variance from or result in a violation of any statute, ordinance, by-law, regulation or standard, the major purpose of which is to prevent or minimize damage to the environment?     \_\_\_   \_\_\_   \_\_\_   \_\_\_

\_\_\_\_\_

19. Could the action(s) result in any form of adverse environmental impact not included in the above questions? (If yes, identify the impacted resource or area.)     \_\_\_   \_\_\_   \_\_\_   \_\_\_

\_\_\_\_\_

**III. Statement of No Significant Environmental Effects**

A "Yes" answer in the "Long Term" column in section II indicates that the action may cause significant environmental impact, and that an EIS will probably be required. If you have answered "Yes" to any of the questions, the effect of which is not clearly beneficial, but still think the action will cause no significant adverse environmental impact indicate your reasons below.

**IV. Conclusions**

Place a check in the appropriate box.

- 1. ( ) It has been determined that the action will not cause a significant adverse environmental impact. No EIS will be prepared.
- 2. ( ) It has been determined that the action may cause a significant adverse environmental impact. An EIS will be prepared by

\_\_\_\_\_

(approximate date)

Signature of Preparing Officer \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

*(Solid Waste Management Board; 329 IAC 5-1-5; filed May 31, 1988, 2:42 pm: 11 IR 3524; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

**Rule 2. Environmental Impact Statement; Activities of State Agencies**

**329 IAC 5-2-1 Purpose of rule**

Authority: IC 13-7-7

Affected: IC 13-7-16-4

Sec. 1. It is the purpose of this rule (329 IAC 5-2) to outline reporting procedures which will assure environmental quality review of state agency plans or activities which affect or may affect the environment of the state, prior to final adoption or implementation of such plans or activities. *(Solid Waste Management Board; 329 IAC 5-2-1; filed May 31, 1988, 2:42 pm: 11 IR 3526; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

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### **329 IAC 5-2-2 Definitions**

Authority: IC 13-7-7

Affected: IC 13-1-12-1; IC 13-7-1; IC 13-7-16-4

Sec. 2. In addition to the definitions contained in IC 13-7-1 and IC 13-1-12-1 the following apply:

“Environmental assessment” means a cursory assessment of the probable environmental effect of a proposed action, determined in accordance with the provisions of 329 IAC 5-1.

“Environmental impact statement” means a detailed report on the environmental impact of a proposed action, listing adverse environmental effects which cannot be avoided should the action be implemented, alternatives to the proposed action, any irreversible and irretrievable commitments of resources which would be involved, the growth-inducing aspects of the proposed action, effects of the proposed action on the use and conservation of energy resources, the rationale for selecting the final proposed action, and other information as further herein specified.

“Plans or activities which may affect the environment” means a major state action significantly affecting the environment as determined by the application of 329 IAC 5-1.

“Report” means an environmental assessment or an environmental assessment followed by an environmental impact statement as further herein defined.

“State agency, department or institution” means any department, board, commission, bureau, or council created by the legislature having statewide jurisdiction, the operation of which is financed from appropriations of the general assembly. Local government units at the town, city, township, or county level are not included. (*Solid Waste Management Board; 329 IAC 5-2-2; filed May 31, 1988, 2:42 pm: 11 IR 3526; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

### **329 IAC 5-2-3 Environmental assessment; environmental impact statement**

Authority: IC 13-1-10-3; IC 13-7-7-1

Affected: IC 13-1-10-3; IC 13-7-16-4

Sec. 3. (a) Environmental Assessment. As early as possible in the formulation of a proposal for an agency action that is not either a statutory exemption or a categorical exemption approved by the board, an environmental assessment will be prepared by the agency in accordance with 329 IAC 5-1 and submitted to the department of environmental management. If it is found by the agency that the proposed action will significantly affect the environment, an environmental impact statement (EIS) will be prepared by the agency. A finding to the contrary will negate the need for an EIS. In this case, the environmental assessment shall constitute the final report to the department as required pursuant to IC 13-7-16-4.

(b) Environmental Impact Statement:

(1) Purpose—The purpose of an environmental impact statement is to relate environmental considerations to the inception of the planning process, to examine alternative means of achieving the intended purpose of the proposed action, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision-making process in determining the environmental consequences of the proposed action.

(2) Content and format:

(A) Description and Purpose of Proposed Action: This clause should describe the purpose and necessity of the proposed action, as well as any land disturbing activities, the structures contemplated, action phasing, and any other resultant changes to the environment caused either directly or indirectly by the proposed action. A statement should also be made on the relationship of the proposed action to present zoning and land use and also to future land use plans. In addition, the method for minimizing any adverse effects due to construction, or its phasing, should be described.

(i) Purpose (use) and objective.

(ii) Structures or other alterations to the natural environment.

(iii) Number of employees and anticipated visitors.

(iv) Land disturbing activities.

(v) Phasing of action.

(B) Listing of Alternatives: This clause should list alternatives as to size, location, etc. “no action” shall be listed as an alternative. Completion of clauses (C) through (K) shall be accomplished for each alternative.

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(C) Present Characteristics: This clause should be used to describe the physical characteristics, population, vegetation, and habitation of the area directly affected and the general area surrounding the proposed action. If the area affected is similar to the surrounding area, one description would be sufficient. Most detail should be given to those aspects of the environment most affected by the proposed action. Less detail can be given to the other aspects.

(i) Area directly affected by proposed acquisitions, development, etc.

(AA) Location, size, and dimensions.

(BB) Existing development and prior manmade alterations to the natural environment.

(CC) Population.

(DD) Physical characteristics.

(aa) Topography.

(bb) Hydrology (including drainage characteristics).

(cc) Geology.

(dd) Soils.

(ee) Landforms.

(EE) Natural vegetation.

(aa) Types.

(bb) Density.

(cc) Use.

(FF) Wildlife/aquatic life.

(aa) Types.

(bb) Density.

(GG) Other attributes.

(aa) Historical areas.

(bb) Geological formations.

(cc) Archeological sites.

(dd) Other.

(ii) Area surrounding proposed site of action.

(AA) Existing development and prior man-made alterations to the natural environment.

(BB) Physical characteristics.

(CC) Population.

(DD) Natural vegetation.

(EE) Wildlife/aquatic life.

(FF) Other attributes.

(D) Growth Inducement Aspects: This clause should describe the potentiality and probability of the proposed action to induce or reduce growth in the area which might not otherwise occur, both short and long-term. The impact of these aspects should be included in clause (E).

(E) Impact of Proposed Action on Human and Natural Environment: In this clause, all effects that the action may have on both the human and natural environment should be described. It should be indicated whether the effects will be local, regional, or statewide in nature. List separately the effects caused by the proposed action alone and the effects caused by the growth inducement aspects of the proposed action. Effects should be quantified wherever possible and compared with existing conditions and applicable standards.

(i) Effect on human population.

(AA) Physical.

(aa) Noise.

(bb) Visual.

(1) Changes to natural environment.

(2) Proposed structures.

(cc) Air pollution.

(dd) Water pollution.

(1) Surface water.

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- (2) Ground water.
- (BB) Social.
  - (aa) Displacement.
  - (bb) Disruption of community and/or neighborhood.
- (ii) Effect on natural environment.
  - (AA) Land form and/or water bodies.
    - (aa) Erosion.
    - (bb) Drainage.
  - (BB) Natural vegetation.
  - (CC) Wildlife/aquatic life habitats.
  - (DD) Cultural facilities.
    - (aa) Historical sites.
    - (bb) Archaeological sites.
    - (cc) Recreational sites or opportunities.
    - (dd) Scenic qualities.

(F) Adverse Effects Which Cannot be Avoided: This clause should specifically identify those effects listed in clause (E) which may be adverse to the human and natural environment and cannot be avoided. These are distinguished from adverse effects which can be avoided by utilizing certain construction or other techniques.

(G) Measures Proposed to Mitigate Adverse Effects of the Action: This clause is intended to describe the measures to be taken to mitigate adverse effects identified under clause (E) and not listed under clause (F). The description should include an evaluation as to the reduction of the adverse effects or the increase in beneficial effects. Environmentally enhanced features should be balanced against detrimental effects of the project.

- (i) Human displacement.
  - (AA) Relocation assistance programs.
  - (BB) Other.
- (ii) Disruption of community and/or neighborhood.
  - (AA) Access ways.
  - (BB) Other.
- (iii) Noise.
  - (AA) Hours of operation.
  - (BB) Relationship to ambient noise level.
  - (CC) Special remedial measures, e.g., berms.
- (iv) Visual.
  - (AA) Grading criteria.
  - (BB) Landscaping.
  - (CC) Architectural integration with site and surroundings.
- (v) Air pollution.
  - (AA) Odor.
  - (BB) Dust.
  - (CC) Other air contaminants.
- (vi) Impact on cultural facilities.
  - (AA) Replacement.
  - (BB) Relocation.
- (vii) Natural vegetation.
  - (AA) Protection and retention of existing vegetation.
  - (BB) Replanting.
- (viii) Wildlife/aquatic life habitats.

(H) Relationship Between Local Short-term Uses of Man's Environment and the Maintenance and Enhancement of Long-term Productivity: This clause requires an assessment of the proposed action for short-term and long-term effects. A determination should be made whether the present benefits will exist for future generations.



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(I) Irreversible and Irretrievable Commitment of Resources: This clause should describe those irreversible losses of resources (prime farm land, mineral resources, timber, water, etc.) which will result if the proposed action is implemented.

(J) Effect on the Use and Conservation of Energy Resources. This clause should include a discussion of the impact, if any, of the proposed action on increasing the existing rate of consumption or decreasing production of energy.

(K) Comparison of Alternatives: Compare the cost and environmental impact, short and long-term effects, irreversible and irretrievable commitment of resources, and effects on use and energy conservation, etc., for each alternative. Use tables for comparison, if possible.

(3) Solicitation of Comments from the Public and Public Agencies: The draft statement shall be circulated to local, state, and federal agencies and to the general public deemed by the agency to have an interest in the proposed action for comment in accordance with agency procedures. At least thirty (30) days shall be allowed for submission of comments. At this stage, the document can be in draft form, prior to agency selection of the best alternative or final proposed action.

(4) Public Hearing: After receipt of comments from the above, the agency shall determine by vote of the governing body whether or not to conduct a public hearing on the environmental impact of the proposed action. As a basis for determination, the agency should consider:

(A) the seriousness of the adverse environmental impacts apparent at the time;

(B) whether or not the proposed action is known or has the potential to be controversial; and

(C) whether or not significant requests for a public hearing have been filed.

If the agency decides to conduct a public hearing, it shall be conducted for the purpose of explaining the environmental impacts, their significance, alternatives available, and mitigating measures which can be taken.

(5) Summary of and Response to Comments from the Public and Public Agencies. A summary of the comments from each commentor, followed by the agency response, and the attachment of the actual comments shall be included in the final statement. If a public hearing was not held, the reasons shall be stated. If a public hearing was held, the date, time, place, and attendance shall be stated.

(6) Evaluation of Alternatives. The alternatives listed in the draft statement, plus any prompted by comments from the public and public agencies, shall be evaluated according to the impact of each on the human and natural environment, utilizing the categories listed in clause (E). Each alternative should also be evaluated from the standpoint of irreversible and irretrievable commitment of natural and energy resources.

(7) Selection of Best Alternative. The best alternative shall be selected in accordance with the provisions of IC 13-1-10-2(b). The rationale used for selecting the best alternative and rejecting the others shall be included.

(8) Submission of Statement to the Department. After selection of the best alternative, the agency may preliminarily adopt said alternative as its intended course of action. The environmental impact statement shall then be submitted to the department. The department shall review the statement from the standpoint of meeting the requirements of this rule (329 IAC 5-2) and shall act within sixty (60) days to accept the statement as submitted, accept with recommendations, or return the statement for revision.

(9) An Alternate Content and Format: When an EIS is to be prepared on the proposed adoption, revision or rescission of a law, regulation, policy, standard, or planning document, the following alternative format to that set out in section (2) may be used.

(A) Description and Purpose of Proposed Action: This clause should describe the purpose and necessity of the proposed action. Included should be any legislative or other legal requirement mandating the proposed action. If the proposed action revises or rescinds an existing law, regulation, policy, standard or planning document, or portion thereof, the magnitude and impact of the revision or rescission should be explained.

(i) Purpose

(ii) Objective

(B) Growth Inducement Aspects: This clause should describe the potentiality and probability of the proposed action to induce or reduce growth which might not otherwise occur, both short and long term. The impact of these aspects should be included in clause (2)(E).

(D) Impact of Proposed Action of Human and Natural Environment: Explain the impact of the proposed action on the following:

Human Health

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Water Quality  
Air Quality  
Land  
Noise  
Traffic  
Natural Vegetation  
Wildlife  
Scenic Qualities  
Historical Sites  
Archaeological Sites  
Recreational Sites or Opportunities  
Population Displacement  
Disruption of Community or Neighborhood

(F) Adverse Effects which Cannot be Avoided: List any adverse impacts which are identified under clause (2)(E).

(G) Measures which are available to mitigate any adverse effects identified under clause (2)(E) and not listed under clause (2)(F).

(H) Relationship Between Local Short-term uses of Man's Environment and the Maintenance and Enhancement of Long-term Productivity: Same as clause (2)(H).

(I) Irreversible and Irretrievable Commitment or Resources: Same as clause (2)(I).

(J) Effect On the Use and Conservation of Energy Resources: Same as (2)(J).

(K) Comparison of Alternatives: Not Applicable.

The remainder of the format shall be the same as the standard format, except that clauses (6) and (7) shall not be considered applicable.

*(Solid Waste Management Board; 329 IAC 5-2-3; filed May 31, 1988, 2:42 pm: 11 IR 3526; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

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