



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
WASHINGTON, D.C. 20555-0001

May 8, 2024

Kyle Wendtland, Administrator  
Wyoming Department of Environmental  
Quality  
Land Quality Division  
200 West 17<sup>th</sup> Street  
Cheyenne, WY 82002

SUBJECT: WYOMING PRELIMINARY PROPOSED REVISIONS TO CHAPTERS 4, 7,  
AND 8

Dear Kyle Wendtland:

We have reviewed the Wyoming preliminary proposed regulations in Chapters 4, 7, and 8, received by our office on February 27, 2024. This is the second of three planned submissions to add new rules for the regulation of source material recovered from any mineral resource processed primarily for purposes other than its uranium or thorium content. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40. We discussed our review of the regulations with Brandi O'Brien on April 11, 2024.

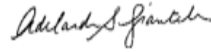
As a result of our review, we have 19 comments and 4 editorial suggestions that have been identified in the Enclosure 1. Under our current procedure, a finding that the Wyoming regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Wyoming regulations. Please note that Chapters 7 and 8 were determined to not be a matter of compatibility. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes and provide a copy to Division of Materials Safety, Security, State, and Tribal Programs, NMSS.

The SRS Data Sheet in Enclosure 2 summarizes our knowledge of the status of other Wyoming regulations, as indicated. Please let us know if you note any inaccuracies or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on: <https://www.nrc.gov/agreement-states>.

If you have any questions regarding the review, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact my staff at [AgreementStateRegs.Resource@nrc.gov](mailto:AgreementStateRegs.Resource@nrc.gov).

Sincerely,



Signed by Giantelli, Adelaide  
on 05/08/24

Adelaide S. Giantelli, Chief  
State Agreement and Liaison Programs Branch  
Division of Materials Safety, Security, State,  
and Tribal Programs  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. Compatibility Comments
2. Wyoming SRS Data Sheet

**COMPATIBILITY COMMENTS ON WYOMING PROPOSED REGULATIONS**

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
1	Chapter 4 Section 3	NA	NA	<p><b>Incorporation by Reference</b></p> <p>There is inconsistency in the language Wyoming uses to incorporate regulations by reference. Wyoming should revise Chapter 4 Section 3 to be consistent with Chapter 5 which provides more clarity. Additionally, there is conflicting and duplicative language that Wyoming needs to revise. Wyoming could revise Section 3 similar to the following:</p> <ul style="list-style-type: none"> <li>(a) The Department fully adopts and hereby incorporates by reference 10 CFR 40.2(a), 40.36(f), 40.51 (except 40.51(b)(6)), 40.54, 40.55, and 40.61 revised as of January 1, 2022. These rules do not include any later amendments or editions of incorporated matter. [Note: see comment 8 regarding 40.36(f)]</li> <li>(b) Delete</li> <li>(c) The Department fully adopts and hereby incorporates by reference 10 CFR 150.20 revised as of January 1, 2022. These rules do not include any later amendments or editions of incorporated matter.</li> <li>(d) Delete</li> </ul> <p>Since Part 20 is already adopted in Chapter 3, Wyoming should not additionally adopt it in Chapter 4.</p> <p>Wyoming needs to make this change to avoid creating any conflicts, duplication, or gaps in its rules.</p>
2	Chapter 4 Section 2(b)	40.3	C	<p><b>License Requirements</b></p> <p>Chapter 4 Section 2 paragraph (b) includes the phrase “or residual radioactive material as defined in Chapter 1, General Provisions.” However, Wyoming has removed the definition for “residual radioactive material” from Chapter 1, as it is not applicable to these regulations.</p> <p>Wyoming needs to delete the phrase “or residual radioactive material as defined in Chapter 1, General Provisions,” from paragraph (b) to avoid</p>

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				creating any conflict in the regulations.
3	Chapter 4 Section 4	40.10	C	<p><b>Deliberate misconduct</b></p> <p>Wyoming has omitted information contained in 10 CFR 40.10 that is needed to meet its Compatibility C designation.</p> <ol style="list-style-type: none"> <li>1. WY needs to revise Ch 4 Section 4(a)(ii) to read “<u>Deliberately submit to the Department, a licensee, an applicant, or a licensee’s or applicant’s contractor or subcontractor...</u>”</li> <li>2. In Ch 4 Section 4(b) WY needs to reference the WY equivalent to the procedures in 10 CFR part 2, subpart B.</li> <li>3. WY needs to revise Ch 4 Section 4(c)(ii) to read “...of a licensee, applicant, <u>contractor, or subcontractor...</u>”</li> </ol> <p>Wyoming also has the deliberate misconduct requirement in Chapter 1 Section 9. To prevent creating conflict and duplication Wyoming needs to delete one of the deliberate misconduct requirements.</p> <p>Wyoming needs to make these changes to meet the Compatibility C designation of 10 CFR 40.10.</p>
4	Chapter 4 Section 6(g)	40.11	B	<p><b>Persons using source material under certain Department of Energy and Nuclear Regulatory Commission contracts</b></p> <p>Wyoming needs to revise paragraph (g) of Chapter 4 Section 6 to be essentially identical to 10 CFR 40.11. Specifically, Wyoming needs to make the following edits:</p> <ol style="list-style-type: none"> <li>1. In the introductory statement replace “81 and 82 of the Act” with “62, 63, 64 of the Act”</li> <li>2. In subparagraph (g)(i) replace “byproduct material” with “source material”</li> <li>3. After subparagraph (g)(iii) add the following: “In addition to the foregoing exemptions, and subject to the requirement for licensing of DOE facilities and activities pursuant to section 202 of the Energy Reorganization Act of 1974 or the Uranium Mill Tailings</li> </ol>

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				<p>Radiation Control Act of 1980, any prime contractor or subcontractor of the DOE or the Nuclear Regulatory Commission is exempt from the requirements for a license set forth in sections 62, 63, and 64 of the Act and from the regulations in this Chapter to the extent that such prime contractor or subcontractor receives, possesses, uses, transfers or delivers source material under his prime contract or subcontract when the Department determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.”</p> <p>Wyoming needs to make these changes to meet the Compatibility B designation of 10 CFR 40.11.</p>
5	Chapter 4 Section 6(f)	40.12(a)	B	<p><b>Carriers</b></p> <p>Wyoming needs to revise paragraph (f) of Chapter 4 Section 6 to reference the correct section of the Atomic Energy Act of 1954, as amended. Specifically, Wyoming needs to replace “Section 81” with “Section 62.”</p> <p>Wyoming needs to make this change to meet the Compatibility B designation of 10 CFR 40.12.</p>
6	None	40.21	C	<p><b>General license to receive title to source or byproduct material</b></p> <p>Wyoming has not adopted 10 CFR 40.21.</p> <p>Wyoming needs to include 10 CFR 40.21 in its regulations to meet the Compatibility C designation of 10 CFR 40.21.</p>
7	None	40.22	B/C	<p><b>Small quantities of source material</b></p> <p>Wyoming has not adopted 10 CFR 40.22.</p> <p>Wyoming needs to adopt 10 CFR 40.22 except for paragraph (b)(4). Wyoming needs to adopt these requirements to meet the Compatibility B and C designations of 10 CFR 40.22.</p>

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8	Chapter 4 Section 3	40.36(f)	H&S	<p><b>Financial assurance and recordkeeping for decommissioning</b></p> <p>Wyoming incorporates 10 CFR 40.36(f) by reference in Chapter 4. However, all other portions of 10 CFR 40.36 are adopted in Chapter 6, which is dedicated to financial assurance requirements.</p> <p>Since Wyoming has a chapter dedicated to financial assurance requirements, all applicable requirements should be included in that chapter, included any requirements incorporated by reference.</p> <p>Wyoming should remove the incorporation by reference of 10 CFR 40.36(f) in Chapter 4 Section 3(a) and either incorporate by reference or otherwise adopt 10 CFR 40.36(f) in Chapter 6 to avoid creating any conflict or gaps in the rules.</p>
9	Chapter 4 Section 8	40.41(a), (b) & (c)	C	<p><b>Terms and conditions of licenses</b></p> <p>Wyoming does not adopt 10 CFR 40.41(a) &amp; (b).</p> <p>Additionally, Wyoming only adopts a portion of 10 CFR 40.41(c) in Chapter 4 Section 8(f). Specifically, Wyoming is missing “Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, possess, and use source material. Preparation for shipment and transport of source or byproduct material shall be in accordance with the provisions of Chapter 9.”</p> <p>Wyoming needs to adopt 10 CFR 40.41(a) &amp; (b) and the remaining portions of 10 CFR 40.41(c). Wyoming needs to adopt these requirements to meet the Compatibility designation of 10 CFR 40.41(a),(b),(c).</p>
10	Chapter 4 Section 17(a)(i)	40.42(g)(1)	H&S	<p><b>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</b></p> <p>Paragraph (a)(i) of Chapter 4 Section 17, ends with an “or” statement, however, this should be an “and sentence. Wyoming needs to revise paragraph</p>

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				<p>(a)(i) to “Have not been previously approved by the Department; <u>and</u>”.</p> <p>Wyoming needs to make this change to meet the H&amp;S designation of 10 CFR 40.42(g)(1).</p>
11	Chapter 4	40.42(g)(5)	H&S	<p><b>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</b></p> <p>Wyoming does not adopt 10 CFR 40.42(g)(5).</p> <p>To meet the health and safety designation of 10 CFR 40.42(g)(5), Wyoming needs to add language to Chapter 4 stating that a proposed decommissioning plan will be approved by the Department if the plan demonstrates decommissioning will be completed as soon as practical while adequately protecting the health and safety of workers and the public.</p> <p>Wyoming needs to make this change to meet the H&amp;S designation of 10 CFR 40.42(g)(5).</p>
12	Chapter 4 Section 16(i)(iii)	40.42(k)(3)	H&S	<p><b>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</b></p> <p>Wyoming needs to revise paragraph (i)(iii) of Chapter 4 Section 16 as follows:</p> <ol style="list-style-type: none"> <li>1. Delete the introductory statement “A radiation survey has been performed which demonstrates that:”</li> <li>2. Revise subparagraph (A) to read “<u>A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the applicable criteria for decommissioning found in 10 CFR Part 20.1401 through 20.1406; or</u>”</li> </ol> <p>Wyoming needs to make this change to meet the H&amp;S designation of 10 CFR 40.42(k).</p>
13	Chapter 4 Section 8(e)	40.46	C	<p><b>Inalienability of licenses</b></p> <p>Wyoming does not adopt paragraph (b) of 10 CFR 40.46.</p>

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				<p>Wyoming needs to amend Chapter 4 Section 8(e) to add language that is at least as restrictive as 10 CFR 40.46(b) providing the information to be included in an application for transfer of a license.</p> <p>Wyoming needs to make the above change to meet the Compatibility C designation of 10 CFR 40.46.</p>
14	Chapter 4 Section 10(c)	40.60	C	<p><b>Reporting Requirements</b></p> <p>Wyoming has included in Chapter 4 Section 10(c)(i)(A) and (B) examples of events requiring immediate reporting. These examples appear to be specific to uranium recovery activities and not rare earths. Wyoming should either:</p> <ol style="list-style-type: none"> <li>1. Remove the two examples in Section 10(c)(i)(A) and (B) or</li> <li>2. Modify the examples to remove reference to tailings.</li> </ol> <p>Additionally, if Wyoming keeps the modified examples, the last sentence of Chapter 4 Section 10(c)(i) should be clarified to state that the examples are not an exhaustive list. Otherwise, the licensee may interpret the reporting requirement to only be applicable to those two types of events.</p> <p>Wyoming is missing information contained in 10 CFR 40.60(c)(2). Wyoming needs to make the following changes to Chapter 4 Section 10(c)(iii):</p> <ol style="list-style-type: none"> <li>1. The reference to "Section 10(c)(iii)" in paragraph (c)(iii)(B) needs to be revised to "Sections 10(c)(i) and 10(c)(ii)."</li> <li>2. In paragraph (c)(iii)(B) delete the statement "as prescribed in Chapter 11 of the Non-Coal Rules and Regulations" and replace with "within 30 days of the initial report." Note: Wyoming may opt for a shorter timeframe than 30 days.</li> </ol> <p>Wyoming needs to make these changes to meet the Compatibility C designation of 10 CFR 40.60.</p>
15	Chapter 4 Section 3(a)	40.61	C, D, H&S	<p><b>Records</b></p> <p>Wyoming incorporates 10 CFR 40.61 by reference in Chapter 4 Section 3(a), however, Wyoming also discusses record requirements in Chapter 1 Section 11. This duplication could create conflict in</p>



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				<p>the requirements. Wyoming should either keep the incorporation by reference or 10 CFR 40.61 in Chapter 4 and delete Chapter 1 Section 11 or remove the incorporation by reference in Chapter 4 and keep the record requirements in Chapter 1 Section 11.</p> <p>Note: If keeping Chapter 1 Section 11, the section would need to be revised as described in the comments of our letter dated January 3, 2024.</p>
16	Chapter 4 Section 16	NA	NA	<p>Paragraphs (g) and (h) of Chapter 4 Section 16 contain incomplete language that is duplicative from Section 17. Wyoming should delete paragraphs (g) and (h) to avoid creating duplication and gaps.</p>
17	Chapter 4 Section 3	40.54 40.61	NA	<p><b>Incorporation by reference reconciliation</b></p> <p>To reconcile differences of incorporated sections of 10 CFR 40 certain terms and references need to be substituted. Specifically, the following substitutions need to be added to Chapter 4 Section 3:</p> <ul style="list-style-type: none"> <li>• In 10 CFR 40.54 and 40.61 a reference to “Commission” means “Department”.</li> <li>• In 10 CFR 40.54 a reference to “§ 40.32” means “Chapter 4 Section 8(a)”.</li> <li>• In 10 CFR 40.54 a reference to “§ 40.22” means “Chapter 4 Section X”.</li> </ul> <p>Note: As stated in Comment 7, Wyoming has not yet adopted the requirements in 10 CFR 40.22, and the third substitution will need to be revised with the Wyoming section equivalent to 10 CFR 40.22.</p>
18	Chapter 4	NA	NA	<p><b>Incorrect references to NRC</b></p> <p>In several instances Wyoming incorrectly references the NRC in Chapter 4. To correct this, Wyoming should amend Chapter 4 as follow:</p> <ol style="list-style-type: none"> <li>1. In paragraph (a)(ii) of Section 4 delete “NRC or”</li> <li>2. In the first line of paragraph (e) of Section 8 delete “the NRC or”</li> <li>3. In the last line of paragraph (b) of Section 16 revise “NRC regulations” to reference Wyoming’s rules (e.g., “these rules”)</li> </ol>

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				4. In paragraph (i)(iv) of Section 16 replace “NRC” with “Department”
19	None	Part 61	B/H&S	<p><b>Part 61</b></p> <p>Wyoming has not adopted 10 CFR 61.55, 56, and 57. Wyoming needs to adopt these requirements as they are necessary to ensure that waste generators classify and label low level waste appropriately.</p>

### EDITORIAL SUGGESTIONS ON WYOMING PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
1	Chapter 4 Section 5	NA	NA	In paragraph (a) of Chapter 4 Section 5, Wyoming discusses the application fee to be accompanied with an application. It is recommended that Wyoming also include a reference to Chapter 7 of these rules which discusses fees.
2	Chapter 4 Section 11	NA	NA	In paragraph (a) of Chapter 4 Section 11, Wyoming sets the term for a license as 10 years. The NRC does not set license terms in regulations but in guidance instead. Since regulations are more difficult to amend, Wyoming may consider deleting this requirement.
3	Chapter 4 Section 16	NA	NA	In paragraphs (i)(iii)(A) and (j) of Section 16, Wyoming states, “10 CFR Part 20.1401 through 20.1406,” however, the correct nomenclature is “10 CFR 20.1201 through 20.1406” and does not include mention of “Part.”
4	Chapter 4 Section 17(b)	40.42(g)(3)	H&S	<p>To provide clarity, Wyoming should consider adding a reference to which procedures paragraph 17(b) in Chapter 4 Section 17 is referring to.</p> <p>Specifically, Wyoming could state: “Procedures <u>listed in paragraph (a) of this section</u> with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.</p>

**STATE REGULATION STATUS**

State: Wyoming

Tracking Ticket Number: 24-13

Date: May 8, 2024

[Amendment(s) reviewed identified by a \* at the beginning of the equivalent NRC requirement.]

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
NA	Wyoming Enabling Legislation Wyoming House Bill HB0027	NA	Proposed ML15225A439  Revised Proposed ML15324A391  Revised Proposed ML17319A925  Revised Proposed ML19004A444  Final Agreement ML18267A261 09/30/2018	Comments 9/28/2015 ML15225A433  Comments 09/26/2016 ML15324A388  Comments 02/28/2018 ML18032A380  No Comments 01/23/2019 ML19004A436	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
NA	Wyoming DEQ Regulations to 10 CFR Part 20 Chapter 1: General Provisions Chapter 3: Radiation Protection Standards	NA	Proposed ML16014A133  Revised Proposed ML16097A348  Final ML17319A925	Comments 03/15/2016 ML16014A131  Comments 10/03/2016 ML16097A339  No Comments 02/18/2018 ML18032A380	
NA	Wyoming DEQ Regulations to 10 CFR Parts 19 and 71 Chapter 1: General Provisions Chapter 5: Notice, Instructions and Reports to Workers Chapter 9: Transportation of Licensed Material Chapter 10: Risk-Informed and Performance Based Licensing and Inspection	NA	Proposed ML16095A093  Final ML17319A925	Comments 07/25/2016 ML16095A091  No Comments 02/18/2018 ML18032A380	
NA	Wyoming DEQ Regulations to 10 CFR Parts 40 and 150 Chapter 1: General Provisions Chapter 4: Licensing Requirements for Source and Byproduct Material Chapter 6: Financial Assurance Chapter 10: General Licenses	NA	Proposed ML16194A168  Final ML17319A925	Comments 10/13/2016 ML16194A048  No Comments 02/18/2018 ML18032A380	
2018-2	Miscellaneous Corrections – Organizational Changes 10 CFR Parts 37, 40, 70 and 71	12/21/2021	ML19030B773	ML19030B770 01/30/2019	This rulemaking does not contain provisions applicable to Wyoming's program.
2018-3	Miscellaneous Corrections Parts 1, 2, 34, 37, 50, 71, 73, and 140	07/30/2022			

<b>RATS ID</b>	<b>NRC Chronology Identification</b>	<b>Date Due for State Adoption</b>	<b>Incoming Letter</b>	<b>Outgoing Package</b>	<b>Notes</b>
2019-1	Miscellaneous Corrections Parts 2, 21, 37, 50, 52, 73, and 110	12/18/2022			
2019-2	Organizational Changes and Conforming Amendments Parts 1, 2, 37, 40, 50, 51, 52, 55, 71, 72, 73, 74, 100, 140, and 150	12/30/2022			
2020-1	Individual Monitoring Devices 10 CFR Parts 34, 36, and 39	06/16/2023			
2020-2	Social Security Number Fraud Prevention 10 CFR Parts 9 and 35	08/17/2023			
2020-3	Miscellaneous Corrections 10 CFR Parts 1, 2, 19, 20, 21, 30, 34, 35, 40, 50, 51, 52, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 110, and 140	11/16/2023			
2021-1	Miscellaneous Corrections 10 CFR Parts 2, 11, 20, 25, 32, 35, 37, 50, 52, 55, 70, 72, 73, 95, and 110	09/08/2024			
2021-2	Miscellaneous Corrections 10 CFR Parts 9, 37, 40, 50, 51, 52, 55, 71, 73, and 110	12/30/2024			
2022-1	Miscellaneous Corrections 10 CFR 1, 2, 20, 30, 40, 50, 55, 70, 73, and 170	none			Provisions are not required for compatibility.
2022-2	Miscellaneous Corrections 10 CFR Parts 20, 35, 50, 51, 52, 72, 73, 110, and 150	none			Provisions are not required for compatibility.
2023-1	Miscellaneous Corrections 10 CFR PARTS 1, 2, 26, 32, 40, 50, 51, 52, 72, and 73	09/25/2026			

<b>RATS ID</b>	<b>NRC Chronology Identification</b>	<b>Date Due for State Adoption</b>	<b>Incoming Letter</b>	<b>Outgoing Package</b>	<b>Notes</b>
NA	Legislation, Articles 15 and 21	NA	ML21194A144	Comments 08/31/2021 ML21194A077	
NA	Proposed Legislation	NA	ML22364A006	No Comments 01/04/2023 ML22364A003	
NA	Final Legislation	NA	ML23059A393	No Comments 03/03/2023 ML23059A385	
NA	Wyoming DEQ Regulations to 10 CFR Parts 19 and 20 Chapter 1: General Provisions Chapter 3: Radiation Protection Standards Chapter 5: Notice, Instructions and Reports to Workers	NA	Proposed ML23290A062	Comments 01/03/2024 ML23285A135	
NA	Wyoming DEQ Regulations to Part 71 and Misc Chapter 1: General Provisions Chapter 6: Financial Assurance Chapter 9: Transportation of Licensed Material	NA	Proposed ML23355A017	Comments 02/29/2024 ML23355A015	
*NA	Wyoming DEQ Regulations to Part 40 and Misc. Chapter 4: Chapter 7: Chapter 8:	NA	Proposed ML24060A151	Comments 05/08/2024 ML24060A149	

WYOMING PRELIMINARY PROPOSED REVISIONS TO CHAPTERS 4, 7, AND 8 DATE May 8, 2024

DISTRIBUTION: DIR RF 24-13 (SP 08)

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**ADAMS Accession No.: ML24103A021**

OFFICE	R-IV/DNMS/MIB	OGC/GCRPS/RMR	NMSS/REFS/RRPB	NMSS/MSST/SMPB
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DATE	May 7, 2024	May 7, 2024	May 7, 2024	May 8, 2024

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