

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED

JUN 11 1 54 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative Rule; CITE AUTHORITY WV Code 19-10A

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7A

TITLE OF RULE BEING AMENDED: Marketing of Eggs Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 13, 1998 AT 1:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Commissioner Gus R. Douglass

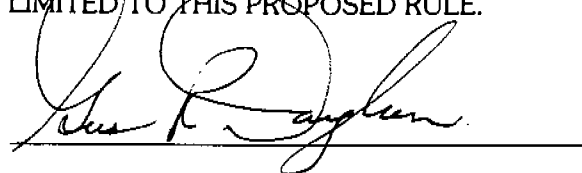
Room 28, Main Unit

State Capitol

Charleston, WV 25305-0170

(304) 558-2227

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.60

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Egg Marketing Law

Type of Rule:  Legislative  Interpretive  Procedural

Agency West Virginia Department of Agriculture

Address 1900 Kanawha Blvd., East  
Charleston, WV 25305-0170

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEHEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The WV Department of Agriculture is currently running as egg inspection program.

3. Objectives of these rules:

To bring the current law up to new industry standards.

Rule Title: West Virginia Egg Marketing Law

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Increase revenues to cover egg inspection expenses by an estimated \$64,259 annually.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

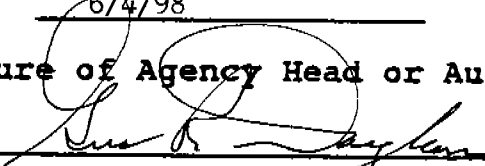
An increase of an inspection fee from 0 to 8¢ per case or 3/10 of 1 cent per dozen.

C. Economic Impact on Citizens/Public at Large.

None

Date: 6/4/98

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
Commissioner Gus R. Douglass  
558-2201

David E. Miller, Deputy Commissioner • Janet L. Fisher, Assistant Commissioner

## WEST VIRGINIA MARKETING OF EGGS LAW REGULATIONS TITLE 61 - SERIES 7A REVIEW OF PROPOSED CHANGES

The West Virginia Egg Marketing Law of 1998 passed into law on March 12, 1998, and became effective June 12, 1998. The following is a brief summary of the proposed changes to the Legislative Rule.

**61-7A-2 DEFINITIONS:** Clarification expanded in many instances and additions added for a better understanding in today's market place. A few examples are ambient temperature, consumer, distributor, embargo, general embargo, and graded eggs.

**61-7A-3 PERMITS AND INSPECTION FEES:** Currently our only fee is ten dollars (\$10.00) for anyone distributing eggs in West Virginia. We are proposing an inspection fee of eight cents (\$0.08) per case (30 dozen), paid on a quarterly basis and continues the yearly permit fee of ten dollars (\$10.00).

**61-7A-4 Exemptions:** Additions to this section:

- Indicate on the carton, date eggs are packed and the statement "Ungraded Eggs"
- Wash the eggs in an acceptable and sanitary method prior to packing
- Eggs being transported shall be refrigerated above freezing at forty-five degrees Fahrenheit (45°) or less.

**61-7A-5 PROHIBITED ACTS:** Major change to this section is the modification of the temperature from sixty degrees Fahrenheit (60°F) to forty-five degrees Fahrenheit (45°F) or less. This change will help ensure the public safety of the consumers in West Virginia. Illness from Salmonella Enteritidis can be avoided through adequate refrigeration, proper cooking and handling.

We have disallowed the repacking of eggs at retail and distributor level.

**61-7A-6 EMBARGO ORDERS:** The addition of a General Embargo to this section will allow the Commissioner to order a statewide stop sale of shell eggs to ensure the quality of the eggs in the state.

West Virginia Marketing of Eggs Law Regulations

## West Virginia Department of Agriculture

**61-7A-7 LABELING REQUIREMENTS:** Additions to this section include designating on the container or consumer receptacle of shell eggs "Keep Refrigerated," a use-by or expiration date and retail breakaway cartons shall contain full labeling information on each half or portion.

**61-7A-8 STANDARDS, GRADES AND WEIGHT CLASSES:** The standards of the United States Department of Agriculture are adopted. This will help eliminate problems that may occur with interstate and intrastate commerce.

**61-7A-9 ADVERTISING:** Eggs advertised or labeled as organic or fertile eggs or any other claims of unusual interior quality or superiority must be accompanied by a statement of proof to the Commissioner and/or inspection to confirm the claim.

**61-7A-10 EGG HANDLING FACILITIES, TEMPERATURE AND HUMIDITY, SANITATION AND CLEANING AND**

**61-7A-11 REFRIGERATION:** The temperature changed from sixty degrees Fahrenheit (60°F) to forty-five degrees (45°F) or less ambient temperature.

These proposed changes have been compared to surrounding states and have been found compatible and timely in regard to up-and-coming issues related to the egg industry. As a result, these changes will ensure continued protection to the citizens of West Virginia.

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TITLE 61  
LEGISLATIVE RULES  
DEPARTMENT OF AGRICULTURE

SERIES 7A  
WEST VIRGINIA MARKETING OF EGGS LAW REGULATIONS

**FILED**  
JUN 11 1 54 PM '98  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§61-7A-1. General.**

1.1 **Scope** - These regulations establish standards for internal and external egg quality, size and weight classifications for shell eggs. The intent of this legislative rule is to protect and promote the public health and general welfare and to prevent fraud and deception in the production, processing, sale and distribution of eggs.

1.2 **Authority.** Chapter 19, Article 10A, Code of West Virginia.

1.3 **Filing Date**

1.4 **Effective Date**

1.5 **Incorporation by Reference**

1.5.a. United States Department of Agriculture, Agricultural Marketing Service, U. S. Standards, Grades, and Weight Classes for Shell Eggs AMS 56. United States Standards for Quality of Individual Shell Eggs and United States Consumer Grades and Weight Classes for Shell Eggs as provided for origin and destination tolerances.

1.6 **Repeal and Replace.** This rule repeals and replaces Title 61 Series 7A, the West Virginia Marketing of Eggs Law Regulations Final Filed on June 1, 1976 with an Effective Date of July 1, 1976.

**§61-7A-2. Definitions**

2.1 "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

2.2 "Candle" means to determine the interior quality of an egg based on the use of a candling light as define in the United States Standards.

- 45 2.3 "Case" means a container that is not a carton and that is used to pack  
46 eggs for distribution or sale to the consumer. A case may contain either loose or  
47 cartoned eggs.  
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- 49 2.4 "Commissioner" means the Commissioner of Agriculture for the State of  
50 West Virginia or his or her duly authorized agent.  
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- 52 2.5. "Consumer" means any person using eggs for food and shall include  
53 restaurants, hotels, cafeterias, hospitals, state institutions, and any other  
54 establishment serving food to be consumed or produced on the premises, but  
55 shall not include the armed forces or any other federal agency or institution.  
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- 57 2.6 "Container" means any carton, basket, case, cart, pallet, or other  
58 receptacle.  
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- 60 2.7 "Denatured" means rendering unfit for human food by treatment or the  
61 addition of a foreign substance as approved by the United States Department of  
62 Agriculture, Agricultural Marketing Service.  
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- 64 2.8 "Distributor" means a person and/or firm engaged in the business of  
65 buying eggs from producers or other persons on his or her own account and  
66 selling or transferring eggs to other distributors or retailers. A distributor further  
67 means a person or firm engaged in producing eggs from his or her own flock and  
68 marketing any portion of this production on a graded basis.  
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- 70 2.9 "Egg" means the product of the domesticated chicken hen and/or any  
71 other eggs offered for sale for human consumption.  
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- 73 2.10 "Embargo" means a written stop sale order issued by the Commissioner of  
74 Agriculture prohibiting the sale, use of, or transportation of eggs in any manner  
75 until the embargo is released by the Commissioner.  
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- 77 2.11 "General Embargo" means a statewide written stop sale order issued by  
78 the Commissioner of Agriculture prohibiting the sale, use of, or transportation of  
79 eggs in any manner until the embargo is released by the Commissioner.  
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- 81 2.12 "Graded Egg" means an egg which is classified in accordance with the  
82 standards established by the United States Department of Agriculture.  
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- 84 2.13 "Inedible" and "Unfit for Human Food" means eggs described as black  
85 rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with  
86 green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing  
87 blood rings, eggs containing embryo chicks (at or beyond the blood ring state),  
88 and any eggs that are adulterated as such term is defined in the Federal Food,  
89 Drug and Cosmetic Act.

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- 2.14 "Packer" means any person who grades, sizes, candles, and/or packs eggs for the purpose of resale.
- 2.15 "Person" means any individual, partnership, association, business trust, corporation or any organized group of persons, whether incorporated or not.
- 2.16 "Possession" means the fact of possession by any person engaged in the sale of a commodity is prima facie evidence that the commodity is for sale.
- 2.17 "Processor" means a person who operates a plant for the purpose of breaking eggs for freezing, drying, or commercial food manufacturing.
- 2.18 "Producer" means any person owning laying hens who markets eggs.
- 2.19 "Repack" means packing of previously graded and packed shell eggs for resale.
- 2.20 "Retailer" means a person who sells eggs directly to the consumer.
- 2.21 "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

**§61-7A-3. Permits and Inspection Fees**

- 3.1. An "Egg Distributor Certificate of Authorization" shall be issued to every person distributing eggs in West Virginia. Permits shall be issued for each place of operation and shall not be transferable with respect to persons or locations. In addition, an inspection fee shall be paid on all shell eggs distributed in West Virginia. Certificate shall be renewable and shall be posted in a conspicuous place in holder's place of business. The Commissioner of Agriculture shall have the power to revoke or suspend the certificate for failure to comply with the provisions of this article and shall refuse to issue a certificate to willful violators.
- 3.2 Application for certificates shall be made on forms supplied by the Commissioner and provide such information as may be considered necessary by the Commissioner. Permits shall be applied for at least fifteen (15) days prior to the expiration of the current permit or within fifteen (15) days of the date that the person intends to engage in business. The certificate shall expire on the thirtieth (30<sup>th</sup>) day of June following date of issue.
- 3.3 Application for such certificate shall be accompanied by ten dollars (\$10.00) which represents the annual permit fee. A penalty of ten dollars (\$10.00) shall be added to all certificates that are not applied for or renewed within this time limit.

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3.4 An inspection fee of \$0.08 per case shall be collected for eggs processed and/or distributed in West Virginia. Fees will be reported and paid on a quarterly basis (March, June, September, December). This fee shall be submitted on forms supplied by the Commissioner and shall be due by the fifteenth(15<sup>th</sup>) day of the following month. Inspection fees which are due and payable and not remitted to the commissioner within fifteen (15) days following the due date shall be assessed a penalty of ten percent (10%) of the amount due, except that reports with no fees due received fifteen (15) days after the due date shall be assessed a penalty of ten dollars (\$10.00).

3.5 The assessment of a penalty fee shall not prevent the commissioner from taking other actions as provided in this article.

3.6 All fees, interest, penalties or other moneys collected by the Commissioner under the provisions of WV Code, Chapter 19-10A shall be paid into a special account and be expended upon the order of the Commissioner for the purpose of the enforcement and administration of this article.

**§61-7A-4. Exemptions.**

4.1 Any person marketing one hundred fifty (150) dozen or less per week of his or her own production shall label their cartons with:

4.1.a. Name and address of the responsible person or business producing and selling the eggs;

4.1.b. Date eggs are packed; and,

4.1.c. The words "Ungraded Eggs" in print of at least five-eighths (5/8) inch .

4.2 Eggs shall be washed in an acceptable and sanitary method prior to packing.

4.3 All eggs being transported, stored or displayed for sell shall be maintained above freezing at forty five degrees Fahrenheit (45°F) or less ambient temperature.

4.4 Exempt firms are permitted to pack in marked cartons when the distributors name, address, expiration date, size and grade are marked out and replaced with the labeling required for exempt marketing of eggs.

4.5 Cartons shall be clean, free of odor and debris.

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4.6 The term "fresh" may only be used when the eggs meet the minimum requirements of Grade A or higher according to the standards set forth by the Commissioner of Agriculture.

4.7 Eggs shall not be below "U. S. Consumer Grade B".

4.8 Any person marketing one hundred fifty (150) dozen or less per week of his or her own production shall register with the West Virginia Department of Agriculture on forms provided by the Commissioner, but shall be exempt from paying a permit or inspection fee.

**§61-7A-5. Prohibited Acts:**

5.1. No person, firm or corporation shall sell, traffic in or deliver to the retail or consuming trade any shell eggs that are:

5.1.a. Loss, inedible, denatured, frozen or leakers;

5.1.b. Not refrigerated above freezing at forty-five degrees (45°F) Fahrenheit or less ambient temperature.

5.2 All shell eggs that are offered for sale, or exposed for sale shall be in containers that are clean, unbroken and free from foreign odor.

5.3 No person may offer eggs for sale to consumers below "U.S. Consumer Grade B."

5.4 No person may prepare, pack, place, deliver for shipment, deliver for sale, load ship transport, offer for sale in bulk containers or advertise by sign, placard or otherwise any eggs for human consumption which are mislabeled or deceptive.

5.5 No person may distribute eggs without a valid egg distributor's permit.

5.6 No person may use descriptive terminology to describe eggs that have not been graded and sized according to the standards set forth by the Commissioner of Agriculture.

5.7 No person may use descriptive terminology such as "fresh" or represent the same to be "fresh" except eggs that meet the minimum requirements of Grade A or higher according to the standards set forth by the Commissioner of Agriculture.

5.8 No person, retailer or distributor shall be permitted to repack eggs.

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#### **§61-7A-6. Embargo Orders**

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#### **§61-7A-7. Labeling Requirements.**

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6.1 An embargo may be written when eggs offered or intended for sale are found to be out of compliance with the provisions of this article. An embargo shall specify the reason for its issuance and shall detail the character of the violation.

6.2 An embargo shall prohibit the sale, use of or transportation of eggs in any manner until the embargo is released by the Commissioner of Agriculture.

6.3 In order to ensure the quality of eggs in the state, the Commissioner may at his discretion:

6.3.a. Order a general embargo to a distributor, processor, packer or retail outlet should eggs being marketed in West Virginia not comply with the provisions of this article.

6.3.b. Order an Administrative Hearing to determine if the "Egg Distributor Certificate of Authorization" should be revoked.

7.1. Any container or sub-container in which eggs are marketed shall bear on the exterior portion of the container, but not be limited to, the following:

7.1.a. The identity of the packer shall be by registry of USDA plant number or by state permit number or name and address of packer, distributor or retailer.

7.1.b. The correct grade and size (weight) classification.

7.1.c. The term "Eggs".

7.1.d. The quantity of eggs per retail unit (i.e.: one dozen, 18 count, etc.) or dozens per case when packing loose eggs for institutional use or an accurate statement of the quantity of the contents in terms of numerical count.

7.1.e. A person may distribute, offer for sale, or sell loose eggs only if that person places a placard on or near the eggs that plainly and conspicuously displays their grade, size, name of packer or distributor and their address. The grade and size may not be abbreviated. The placard shall be of legible print in block letters not less than three eighths (3/8)

269 inch in height. The minimum size of this placard shall be four and one half  
270 by six (4 ½ x 6) inches.  
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272 7.1.f. The words "Keep Refrigerated" shall be marked in a plain and  
273 conspicuous manner on each container or consumer receptacle of shell  
274 eggs.  
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276 7.1.g. Use by or expiration date.  
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278 7.1.h. Eggs that are packed for breaking plants shall be labeled  
279 according to USDA requirements.  
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281 7.2 If eggs are packed in retail breakaway cartons that can be divided by the  
282 consumer or retailer into smaller units for the purpose of selling lesser amounts  
283 of eggs, each half or portion of the container shall contain full information as  
284 required by this section.  
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287 **§61-7A-8. Standards and Tolerances for Interior and Exterior Shell Egg Quality.**  
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289 8.1. The standards for interior and exterior shell egg quality shall be the same  
290 as the United States Standards, Grades and Weight Classes for Shell Eggs, as  
291 revised, and shall provide for origin and destination tolerances as specified.  
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293 8.2 These Standards are adopted by reference (Agricultural Marketing  
294 Service, U.S. Department of Agriculture as AMS 56, United States Standards,  
295 Grades, and Weight Classes for Shell Eggs).  
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297 **§61-7A-9. Advertising**  
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299 9.1 All eggs advertised or displayed for sale for human food at a given price  
300 shall designate the correct grade and size, and such designation shall also  
301 appear on the exterior of the container in which any such eggs are offered for  
302 sale; the grade and size designations may not be abbreviated.  
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304 9.2. Restaurants, hotels, delicatessens and other eating places using eggs  
305 below "A" quality shall be required to display a placard of heavy cardboard of not  
306 less than eight (8) by eleven (11) inches, stating the quality and weight of the  
307 eggs used by the establishment in a location where it can easily be seen by the  
308 customers, or in lieu thereof, place this information on the menu.  
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310 9.3 No eggs shall be advertised or labeled as "organic eggs" or "fertile eggs",  
311 including but not limited to any other claims of unusual interior quality or

312 superiority, until a statement of proof is submitted to the Commissioner of  
313 Agriculture and/or an inspection confirms the claim.

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317 **§61-7A-10. Egg Handling Facilities, Temperature and Humidity, Sanitation and**  
318 **Cleaning.**

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10.1 Any packer or distributor engaged in the assembling, marketing or the  
processing of eggs for marketing shall maintain egg handling facilities in a  
manner commensurate with laws governing food establishments.

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10.2 Maintain the eggs above freezing at forty-five (45°F) degrees Fahrenheit  
ambient  
temperature or less.

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10.3 A relative humidity which will minimize shrinkage.

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10.4 Distributors and/or packers shall wash eggs in an acceptable and sanitary  
method prior to packing.

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10.5 Cartons shall be stored in a clean and sanitary area, free of foreign odor.

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10.6 Cartons shall be clean, free of foreign odor and debris.

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**§61-7A-11. Refrigeration**

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11.1 All eggs being transported and/or stored at or by a person, distributor,  
wholesaler, retailer, restaurant or institution shall be maintained above freezing  
at an ambient temperature of forty-five degrees Fahrenheit (45°F) or less.

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343 **§61-7A-12. Hearings and Appeals**

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12.1 Any person aggrieved by any action taken under this article shall be  
afforded the opportunity for a hearing before the Commissioner of Agriculture.  
The Commissioner may designate a time and place where such hearing may be  
held.

348 **§61-7A-13. Powers and Duties of the Commissioner.**

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13.1 The Commissioner reserves the right to revoke, suspend, rescind or  
amend any rules, regulations or standards herein set forth.

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