

Proposed

State of Kansas

Department of Labor

Notice of Public Hearing on Proposed Administrative Regulations

July 25, 2018

A public hearing will be conducted on Tuesday, October 9, 2018 at 2:00 pm in Hearing Room 3 of the Department of Labor Building, 401 SW Topeka Blvd., Topeka, Kansas to consider the adoption of proposed rules and regulations of the Division of Workers Compensation, Department of Labor on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Division of Workers Compensation, 401 SW Topeka Blvd., Suite 2, Topeka, Kansas 66603 or by email to Jose.Castillo@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

An individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Request for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Jose Castillo at (785) 296-4000, ext. 2159 (or TTY 1-800-766-3777). The northwest entrance to the Department of Labor Building is accessible. Handicapped parking is located at the northwest side of the Department of Labor Building.

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be obtained by contacting Jose Castillo at (785) 296-4000 ext. 2159 or Jose.Castillo@ks.gov.

Summaries of the proposed regulations and their economic impact follow (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the Department of Labor, other state agencies, state employees, or the general public has been identified.)

K.A.R 51-1-1 – Forms. This regulation is being revoked and replaced with K.A.R. 51-1-26.

K.A.R. 51-1-26 – Submissions; electronic filing (E-filing) system. This regulation will address the new mandatory electronic filing with the division of workers compensation on and after November 30, 2018.

K.A.R. 51-17-2 – Methods of filing; service. This regulation will address the methods for filing by represented parties, unrepresented parties and service.

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Economic Impact – There will be a minimal initial start-up cost in the form of the time it takes to set up accounts (creating user names and passwords) and the time it takes to receive training which will be provided by the Division of Workers Compensation at no cost to the users. Thereafter, users will realize immediate savings through the elimination of document printing, document copying, mailing supplies, postage, courier service charges, document storage costs and the corresponding savings of time and labor no longer required to complete these tasks.

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K.A.R. 51-1-1. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, 44-508, 44-510b, 44-527, 44-532, 44-534, 44-534a, 44-542a, 44-543, 44-557, 44-567; effective Jan. 1, 1966; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1983; revoked P-_____.)

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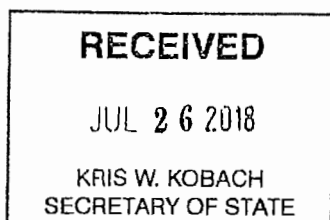
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K.A.R. 51-1-26. Submissions; electronic filing (E-filing) system. Except as otherwise specified in the Kansas workers compensation act and the implementing regulations, all forms and other submissions required to be filed with the director or the division of workers compensation (division) in the Kansas department of labor shall be filed through the electronic filing (E-filing) system. Forms filed with the division shall be the forms prescribed or approved by the director.

(a) On and after November 30, 2018, in all workers compensation claims before the division, use of the division's electronic filing system, which is known as the online system for claims administration research and regulation (OSCAR), shall be required for all parties represented by legal counsel. Self-represented parties may file through the E-filing system but shall not be required to do so, as specified in K.A.R. 51-17-2.

(b) Electronic filing shall mean the process by which documents and submissions are created online and by which paper documents are scanned, uploaded, and filed with the division and served upon parties by electronic transmission using the E-filing system. This shall include any documents that become part of the case record, whether submitted by the division or by the litigants. Document service using the E-filing system upon a party represented by legal counsel or a self-represented party choosing to use the E-filing system shall constitute valid service. Document service by or on parties who are not represented by legal counsel and who have not chosen to use the E-filing system shall be performed as otherwise specified in K.A.R. 51-17-2.

(c) Access to the E-filing system shall be through the division's web site. In order to register as a user for an account with the E-filing system, the user shall agree to register and to be bound by and adhere to the terms and conditions of use.



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(d) Each submission shall be considered filed when received by the E-filing system.

(Authorized by K.S.A. 44-573; implementing K.S.A. 2017 Supp. 44-508, K.S.A. 2017 Supp. 44-532, K.S.A. 2017 Supp. 44-534, K.S.A. 2017 Supp. 44-536a; effective P-_____.)

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K.A.R. 51-17-2. ~~Facsimile~~ Methods of filing; service. On and after November 30, 2018, each party represented by legal counsel shall file workers compensation case documents through the electronic filing (E-filing) system of the division of workers compensation (division) in the Kansas department of labor, as specified in K.A.R. 51-1-26. Any party not represented by legal counsel may file using the division's electronic filing system. If a party not represented by legal counsel chooses not to use the division's electronic filing system, the party shall file by ~~fax~~ facsimile, by mail, or by hand-delivery directly to the division of workers compensation and shall serve a copy of each document on the parties.

(a) Definitions. Each of the following terms as used in this rule regulation, unless the context requires otherwise, these definitions shall apply: have the meaning specified in this subsection:

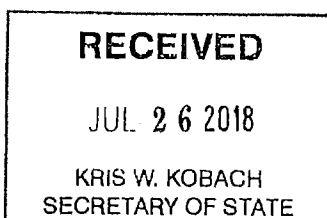
(1) "Document" ~~includes~~ shall include not more than one pleading and ~~all~~ corresponding exhibits.

(2) "Facsimile filing" ~~or~~ and "filing by fax" ~~means~~ mean the facsimile transmission of a document to the division for filing with the division.

(3) "Facsimile machine" means a machine that can send a facsimile transmission.

(4) "Facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electronic signals, transmits the signals over a telephone line or other communications medium, and reconstructs the signals to print a duplicate of the document at the receiving end.

(5) "Fax" is an abbreviation for "facsimile" and ~~refers~~ means, as indicated by



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the context, to the facsimile transmission or to a document so transmitted.

(6) “Fax filing agency” means an entity that receives documents by fax for processing and filing with the division. “Filing” means the act of submitting a document to the division for the division’s consideration and action. A document is filed by delivering it to the division by one of the means specified in this regulation.

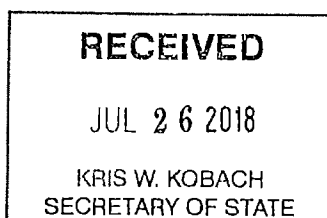
(7) “Filing by hand-delivery” means submitting a document to the division by delivery in person to the division. Proof of filing by hand-delivery is established by retention of a copy of the hand-delivered document that has been date-stamped by an employee of the division at the time of the hand-delivery.

(8) “Filing by mail” means submitting a document to the division through the United States postal service, or other service or system by which letters and parcels are collected and delivered for a fee, addressed to an office of the division of workers compensation. Filing by mail is complete upon receipt by the division.

(9) “Serve” means to deliver a document, or copy thereof, by a party in a legal action or proceeding in which the party is involved, to another person, entity or party, electronically, by fax, by mail, or by hand-delivery.

(7) (10) “Service by fax” means the transmission of a document to a party under these rules by facsimile machine. Service by fax shall be complete upon generation of a transmission record by the transmitting machine indicating the successful transmission of the entire document. Service that occurs after midnight, central standard time, shall be deemed to have occurred on the next day.

(11) “Service by hand-delivery” means the delivery in person of a document to



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the party upon whom service is required or, if the party is a nonperson entity, by handing the document to a person in charge or person designated for this purpose at an office of the party.

(12) "Service by mail" means the delivery of a document by United States postal service, or other service or system by which letters and parcels are collected and delivered for a fee, addressed to the party's last known address. Service by mail shall be presumed if a person fills out and signs a written certificate of service.

~~(8)~~ (13) "Transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of any errors in transmission.

(b) Form of documents.

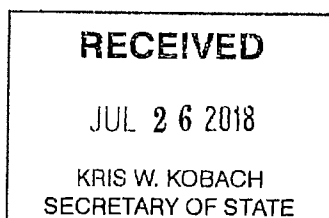
(1) The document placed in the transmitting fax machine shall comply with all applicable ~~rules~~ requirements on the form, format, and signature of papers.

(2) The first page of each document filed by fax shall include the words "by fax." Each page shall be numbered and shall include an abbreviated caption of the case and an abbreviated title of the document. The ~~attorney~~ party shall also include the ~~attorney's party's~~ name, address, telephone number, and fax number, ~~and supreme court registration number~~ on the document.

~~(3) The cover sheet required by paragraph (c)(3) and any special processing instructions are not included in the 10 page limitation in (c)(1).~~

(c) Methods of filing by a party not represented by legal counsel.

(1) If a party not represented by legal counsel chooses not to use the



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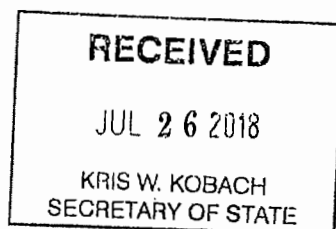
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division's electronic filing system, the party may file by fax directly to the division of workers compensation, at the facsimile numbers authorized, or by mail or hand-delivery to the division a document of not more than 10 pages, excluding the required cover sheet. A document may not be split into multiple fax transmissions to avoid the page limitation.

(2) The division's facsimile machine shall be available on a 24-hour basis. This provision shall not prevent the division from sending documents by fax or providing for normal repair and maintenance of the fax machine. Facsimile filings received in the division shall be deemed filed ~~as of~~ at the time printed by the division facsimile machine on the final page of the facsimile document received.

(3) Each facsimile document filed shall be accompanied by the facsimile transmission cover sheet, which shall contain the date, the docket number, case caption, ~~attorney party~~ name, address, ~~supreme court registration number~~, telephone and fax ~~number numbers~~, and the name of the document. The cover sheet shall be the first page transmitted.

(4) ~~A~~ Each party filing by fax shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the division ~~because of~~ due to an error in the transmission of the document the occurrence of which was unknown to the sender, any other failure not within the sender's control, or a failure to process the facsimile filing when received by the division, the sender may move the administrative law judge or the workers compensation board for an order to accept the timely filing of the document ~~none pro tunc~~. The motion shall be accompanied by the transmission record, a copy of the document transmitted, and an affidavit of



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transmission by fax as set forth in a form specified by the director.

(5) Filing of documents by mail, properly addressed with postage or delivery fees paid, or by hand-delivery to the division's office in Topeka, Kansas shall be complete upon receipt by the division.

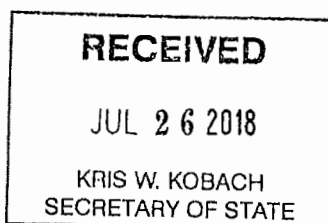
(d) Possession of documents. A Each party not represented by legal counsel who files by fax shall retain the original document in the party's possession or control during the pendency of the action and shall produce this document upon request by the division, administrative law judge, workers compensation board, or any party to the action. Upon failure to produce ~~such~~ the document, the fax may be stricken, and the party may be subject to sanctions under K.S.A. 44-5,120(d)(20), ~~as amended~~ and amendments thereto.

(e) Signatures. A Each signature reproduced by facsimile transmission shall be ~~treated as~~ considered an original signature.

(f) ~~Fax filing agency. A party may transmit a document, without page limitation, by fax to a fax filing agency for filing with the division. The fax filing agency shall act as the agent of the filing party and not as an agent of the division.~~

~~(g)~~ (f) Service by the division of papers by facsimile electronic transmission and by mail.

(4) The division ~~may~~ shall serve a notice by fax if the notice may be served by ~~mail~~ documents and notices requiring service electronically upon any party represented by legal counsel and upon any party not represented by legal counsel who has elected to use the division's electronic filing system. ~~The notice~~ Documents and notices requiring



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service may shall be served by fax mail on a party not represented by legal counsel who
has not elected to use the division's electronic filing system ~~who consents to fax service~~
under paragraph (4) of this subsection.

(2) ~~Service of papers may be made by facsimile transmission only in~~
~~proceedings subject to these regulations and only on an attorney representing a party.~~

(3) ~~Service by fax shall be made by transmitting the document to the~~
~~attorney's designated facsimile machine telephone number.~~

(4) ~~An attorney shall be deemed to consent to service by fax in a proceeding~~
~~by any of these methods:~~

(A) ~~Filing a document by fax in that proceeding;~~

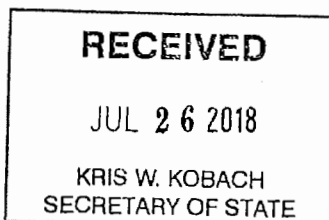
(B) ~~serving a document by fax in that proceeding; or~~

(C) ~~serving a pleading that includes the attorney's fax number on the pleading.~~

(5) ~~An attorney who consents to fax service shall make his or her fax machine~~
~~available for receipt of documents between 9:00 a.m. and 5:00 p.m., except on Saturday,~~
~~Sunday, and legal holidays listed in K.S.A. 60-206(a), as amended. This provision shall~~
~~not prevent the attorney from sending documents by fax or providing for normal repair~~
~~and maintenance of the fax machine during these hours.~~

(6) ~~Service by fax is complete upon generation of a transmission record by the~~
~~transmitting machine indicating the successful transmission of the entire document.~~
~~Service that occurs after 5:00 p.m. shall be deemed to have occurred on the next day.~~

(g) Certificates of service.



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(1) Each electronically filed document shall include a certificate of service if service is required. Each certificate of service by electronic transmission shall include the following:

(A) The date of electronic transmission;

(B) a statement that the service was made by electronic transmission;

(C) the name and electronic-mail address of each party served; and

(D) the signature of the person serving the document by electronic transmission.

~~(7)~~ (2) A Each certificate of service by fax shall include the following:

(A) The date of transmission;

(B) the name and facsimile machine telephone number of ~~the persons~~ each party served;

(C) a statement that the document was ~~transmitted~~ served by facsimile transmission and that the transmission was reported as complete and without error; and

(D) the signature of the ~~attorney or the person making~~ serving the document by facsimile transmission.

(3) Each certificate of service by mail shall include the following:

(A) The date of mailing;

(B) the name and mailing address of each party served;

(C) a statement that the document was served by depositing it in the mail; and

(D) the signature of the person serving the document by mail.

(Authorized by K.S.A. 44-573; implementing K.S.A. 2017 Supp. 44-534, as amended by L. 1997, Ch. 125, Sec. 8, K.S.A. ~~1996 Supp. 44-534a~~, as amended by L. 1997, Ch. 125,

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K.A.R. 51-17-2

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~~Sec. 9, K.S.A. 1996 2017 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12;~~
effective May 22, 1998; amended P-_____.)

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

Proposed

Kansas Department of Labor
Agency

Jose L. Castillo
Agency Contact

(785) 296-4000, ext. 2159
Contact Phone Number

K.A.R. 51-1-1; K.A.R. 51-1-26; K.A.R. 51.17.2
K.A.R. Number(s)

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: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

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

These new regulations adopt an electronic filing system for workers compensation claims filing and administrative litigation with the Division of Workers Compensation (hereafter the Division). The electronic filing system will also bring our antiquated, paper-intensive filing process into conformity with the electronic filing process that must be utilized when appealing an order from the Division to the Kansas appellate court system.

K.A.R. 51-1-1 was a regulation that dealt with paper forms that are currently filed with the Division. As the Division moves to a paperless electronic filing system, this regulation will no longer be necessary and is being repealed. Filings with the Division on or after November 30, 2018 will be made electronically as required by K.A.R. 51-1-26 and K.A.R. 51-17-2.

K.A.R. 51-1-26 will require that on or after November 30, 2018 all documents will be filed electronically through the Division's electronic filing (E-filing) system unless otherwise specified.

K.A.R. 51-17-2 establishes the methods for filing and service of process on or after November 30, 2018. All parties represented by legal counsel must file using the Division's E-filing system. Those parties not represented by legal counsel may file using the Division's E-filing system but are not required to do so. If these individuals choose not to file electronically, they may file by fax, mail or hand delivery to the Division. Further, the regulation provides definitions for words and terms used in these regulations.

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)

The regulations are not mandated by the federal government. At nearly all levels of litigation in nearly all jurisdictions, in federal courts, in Kansas appellate courts, in Kansas state district courts and in many state administrative actions in agencies of Kansas governmental units, attorneys are mandated to file documents electronically. When an action taken by the Kansas Workers Compensation administrative court system is appealed to Kansas' appellate court system, documents will be required to be filed electronically at the Kansas Court of Appeals and the Kansas Supreme Court. It would be

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more costly for Kansas workers compensation attorneys to utilize and maintain two separate systems for managing their caseloads, one for creating and filing paper documents and another for filing documents electronically, than it will be to conform the Division's administrative litigation process to the electronic document filing system whose use is mandatory when appealing an order of the Division to the Kansas Court of Appeals. As a result, the Division is implementing an electronic document filing system which is more efficient than the current outdated paper-based process. It will save time, paper, postage, mailing supplies, document storage fees, courier charges and other costs for the Division and the Division's customers and stakeholders.

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;

The electronic filing system being implemented through these regulatory changes will enhance business growth by making it easier, less time-consuming, and less costly for our customers to interact electronically with the workers compensation claims process administered by our agency.

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;

Other than access to a personal computer and the internet, no purchases will be required. Because the electronic filing system is web-based, no software purchases will be needed and there will be no filing charges to customers made by the Division.

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

The businesses directly affected by the proposed regulations will be law firms and insurance companies litigating workers compensation matters before the Division, and court reporters.

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

Those utilizing the Division's E-filing system will have an initial cost in the form of the nominal time it will take to set up their accounts (creating user names and passwords) and the training necessary to learn how to navigate within and use the E-filing system. E-filing training will be provided by the Division at no cost to users. Thereafter, users will realize immediation and on-going savings through the elimination of document printing, document copying, mailing supplies, postage, courier service charges, document storage costs and the corresponding savings of time and labor no longer spent completing these tasks following conversion to electronic filing.

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;

Customer and stakeholder input has been sought and incorporated into the system's web-based design in an effort to prepare our customers for conversion to a more efficient, cost-effective, paperless environment. At Workers Compensation seminars presented annually by the agency, customers and

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stakeholders have been given numerous presentations about the conversion to an electronic filing system in an effort to acclimate them to this coming change and to minimize disruption to the flow of work upon conversion. Because the system is web-based, no purchases of software will be required of our stakeholders and customers.

- 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.

\$0.00

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

\$0.00

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.

When designing the new electronic filing system, the KDOL intentionally developed a system with *de minimus* costs of implementation for our stakeholders and customers. Evaluatory meetings with stakeholder groups and customers during our design and development phases have confirmed the *de minimus* nature of the new system's implementation impact for our target users.

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.

Because the net effect of implementation of these regulations will be a costs savings for cities, counties and school districts, and it imposes no additional functions or responsibilities, the agency has not formally consulted with the League of Kansas Municipalities, Kansas Association of Counties, or the Kansas Association of School Boards.

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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 consulted with and solicited input from stakeholders and customers who will be directly and indirectly affected by the conversion to an electronic filing system through several means, including the solicitation of feedback by question and answer following presentations at the agency's annual Workers Compensation seminar, by publication of information on the Division's website, and by focus group feedback from a representative group of legal practitioners who regularly file and litigate workers compensation claims with the Division. The agency also sought input and advice from customers and stakeholders through focus group discussions with agency administrative law judges, and other judicial system personnel, who interact on a regular basis with workers compensation attorneys and insurance carriers that will be directly affected by the conversion to an electronic filing system.

- 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).**

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