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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 23, and 52

[FAR Case 2015-024; Docket No. 2015-0024, Sequence No. 1]

RIN 9000-AN20

Federal Acquisition Regulation: Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation (FAR Case 2015-024)

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to create an annual representation within the System for Award Management for vendors to indicate if and where they publicly disclose greenhouse gas emissions and greenhouse gas reduction goals or targets. This information will help the Government assess supplier greenhouse gas management practices and assist agencies in developing strategies to engage with contractors to reduce supply chain emissions, as directed in the Executive Order on Planning for Federal Sustainability in the Next Decade.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2015-024 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-024". Select the link "Comment Now" that corresponds with "FAR Case 2015-024". Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015-024" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001.

Instructions: Please submit comments only and cite "FAR Case 2015-024: Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation" in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of

your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, at 703-795-6328 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755.

SUPPLEMENTARY INFORMATION:

I. Background

President Obama has made greenhouse gas (GHG) emissions reduction a priority. In 2015, the Administration announced a new target to reduce Federal Government emissions by 40 percent below 2008 levels by 2025. Through Executive Order (E.O.) 13693, Planning for Federal Sustainability in the Next Decade (published at 80 FR 15871, on March 19, 2015), the President established a strategy to reduce GHG emissions across Federal operations and the supply chain, including specific actions to better understand and manage the implications of supply chain emissions. To that end, E.O. 13693 requires the seven largest procuring agencies to implement procurements that take into consideration contractor GHG emissions and directs the Council on Environmental Quality to release an

annual inventory of major suppliers that includes information on whether those suppliers publicly disclose GHG emissions and GHG reduction targets. E.O. 13693 supersedes E.O.s 13423 and 13514.

In order to identify opportunities to reduce supply chain emissions, develop and implement procurements that incorporate consideration of those emissions, and develop an accurate annual inventory that includes contractor GHG management practices, greater insight into the scope of GHG management by companies seeking to do business with the Federal Government is needed. This information will help the Government assess supplier GHG management practices and assist agencies in developing strategies to engage with contractors to reduce supply chain emissions as directed in E.O. 13693.

Public disclosure of GHG emissions and reduction goals or targets has become standard practice in many industries, and companies are increasingly asking their own suppliers about their GHG management practices. Performing a GHG inventory provides insight into operations, spurs innovation, and helps identify opportunities for efficiency and savings that can result in both environmental and financial benefits. By asking suppliers whether or not they publicly report emissions and reduction targets, the

Federal Government will have accurate, up-to-date information on its suppliers. An annual representation will promote transparency and demonstrate the Federal Government's commitment to reducing supply chain emissions. Furthermore, by promoting GHG management and emissions reductions in its supply chain, the Federal Government will encourage supplier innovation, greater efficiency, and cost savings, benefitting both the Government and suppliers and adding value to the procurement process.

II. Discussion and Analysis

Accordingly, DoD, GSA, and NASA are proposing to revise the FAR to add an annual representation within the System for Award Management (SAM) for offerors to indicate if and where they publicly disclose GHG emissions and GHG reduction goals or targets. This representation would be mandatory only for vendors who received \$7.5 million or more in Federal contract awards in the preceding Federal fiscal year. The representation would be voluntary for all other vendors. Additionally, as long as the vendor's emissions are reported publicly - either by the entity itself or rolled up into the public emissions report of a parent company - the emissions would be considered publicly reported.

In addition to adding the new representation at FAR 52.223-ZZ, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation, this rule proposes to—

- Revise the definition of “greenhouse gases” at FAR 23.001 to add nitrogen trifluoride, in accordance with the definition in section 19 of E.O. 13693;
- Update the scope sections at FAR sections 23.000 and 23.800;
- Revise the authorities at FAR section 23.801 to add the new E.O. and delete the superseded E.O.s 13423 and 13514;
- Add a new FAR section 23.803, Contractor public disclosure of greenhouse gas emissions and reduction goals (current section 23.803 is redesignated as 23.802);
- Add a prescription at FAR section 23.804(b) for use of the new representation provision 52.223-ZZ. The provision will be required as an annual representation whenever provision 52.204-7 is included in the solicitation. It is therefore applicable to all solicitations, including solicitations for the acquisition of commercial items (including commercially available off-the-shelf items) and acquisitions that do not exceed the

simplified acquisition threshold, except as provided in FAR section 4.1102(a); and

- Make other conforming changes in FAR sections 4.1202, 52.204-8, and 52.212-3.

Additionally, in furtherance of E.O. 13653, Preparing the United States for the Impacts of Climate Change (published at 78 FR 66819, on November 1, 2013), DOD, GSA, and NASA are considering the development of means and methods to enable agencies to evaluate and reduce climate change related risks to, and vulnerabilities in, agency operations and missions in both the short and long term, with respect to agency suppliers, supply chain, real property investments, and capital equipment purchases. This consideration reflects growing Federal and public interest in better understanding operational and supply chain risks facing agency suppliers and steps those suppliers are taking to identify and manage those risks. Agency suppliers that are public companies are already subject to requirements to disclose material risks, including relevant risks associated with climate change, per Securities and Exchange Commission Interpretation: Commission Guidance Regarding Disclosure Related to Climate Change (Release Nos. 33-9106; 34-61469; FR-82), including impacts to personnel, physical assets, supply chain and

distribution chain. It is in this context that DOD, GSA, and NASA are considering approaches to make disclosures of climate change risk analyses from Government suppliers available to agencies to help inform agency inventory and management of climate related risks to Federal facilities, operations, and missions, including supply chains. Such disclosures might also include whether information is made available to the public, to allow agencies to access the information rather than asking companies to submit reports to the Government. Approaches could include representations like one or more of the following:

The Offeror, or its immediate owner or highest-level owner, does, does not assess risks they face as a result of extreme weather and other effects of climate change, including physical impacts and risks. The Offeror, or its immediate owner or highest-level owner, publicly does, does not disclose risks they face as a result of extreme weather and other effects of climate change, including physical impacts and risks.

If the Offeror files with the Securities and Exchange Commission (SEC), the Offeror's SEC Regulation S-K filing or that of its immediate owner or highest-level owner does, does not discuss the risks they

face as a result of extreme weather and other effects of climate change, including physical impacts and risks.

DOD, GSA, and NASA welcome thoughts on these and/or other possible FAR revisions addressing climate change that might be appropriately considered to further the objectives described above.

III. Applicability to Acquisitions not Greater than the Simplified Acquisition Threshold, Commercial Items, and Commercial Off-the-shelf Items

The Federal Acquisition Regulatory Council has made preliminary determinations that the rule will apply, in certain circumstances, to acquisitions under the simplified acquisition threshold (SAT), acquisitions of commercial items, and commercially available off-the-shelf (COTS) items - namely those situations where the contractor has been awarded contracts of more than \$7.5 million in goods and services during the prior Government fiscal year. In making its initial determination the FAR Council considered the following factors: (i) the benefits of the policy in furthering Administration goals; (ii) the extent to which the benefits of the policy would be reduced if exemptions are provided; and (iii) the burden on contractors if the policy is applied to these categories of spend.

With respect to the first factor, as explained above, the President has made GHG emissions reduction a priority and E.O. 13693 establishes a strategy to reduce GHG emissions across Federal operations and the supply chain that is rooted in developing an inventory of contractor GHG management practices so that the Government can more fully understand the current state of activity by companies doing business with the Government and work with contractors over time to develop appropriate strategies to reduce supply chain emissions. Unfortunately, there is currently no single place where this information can be easily evaluated and no established method to collect this information. This rule will address that shortcoming and facilitate the Administration's goal by making data available in a standardized format to enhance the Federal Government's ability to track GHG management trends within the Federal supply chain and help to inform agency procurement strategies to reduce supply chain emissions.

With respect to the second factor - impact of excluding commercial items and COTS purchases on the overall benefits of the underlying policy - the FAR Council notes that GHG reporting is becoming increasingly commonplace in the commercial marketplace. Because reporting is done annually by contractors and not by

individual acquisition, the FAR Council is concerned that if an exclusion were provided to sellers of commercial items and COTS, a large number of contractors that sell in both the commercial and Federal marketplace would be exempted and the rule would fail at providing the type of information and insight that is needed to help agencies assess supplier GHG management practices. As a general matter, the FAR Council does not seek to burden small businesses or other entities that primarily transact in amounts under the SAT and believes by setting a threshold of \$7.5 million, most of those sellers will not be covered.

With respect to the third factor, the FAR Council has sought to minimize burden associated with the disclosure requirement. Specifically, the disclosure will apply only to major Federal suppliers who have been awarded contracts totaling more than \$7.5 million in goods and services in the prior Government fiscal year. Based on Fiscal Year (FY) 2015 data, the FAR Council expects this requirement will cover approximately 5,500 unique entities, including about 2,700 small businesses. This represents approximately 3.5 percent of total entities that did business with the Federal Government in FY 2015, and 2.6 percent of small businesses. The FAR Council projects a minimal paperwork burden associated with the disclosure,

approximately .25 hours per response for annual reporting for the 5,500 contractor, or 1,375 hours (see discussion on the Paperwork Reduction Act under section VI).

Accordingly, for the reasons set forth above, the FAR Council has made a preliminary determination that it is in the best interest of the Government not to exclude application of the rule for acquisitions, or sellers, of commercial items or COTS, or purchases below the SAT. Since the rule is not based in statute, the formal determination requirements of 41 U.S.C. 1905, 1906, and 1907 do not apply, but the FAR Council is providing this discussion as part of its commitment to transparency and accountability in the application of new regulatory requirements to these purchases and will consider public feedback in response to this discussion before making a final determination on the scope of the final rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying

both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.. Nevertheless, an Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

This rule proposes to add a representation that will provide information to help the Government assess supplier greenhouse gas (GHG) management practices and assist agencies in developing strategies to engage with contractors to reduce supply chain emissions, as directed in the Executive Order (E.O.) 13693, Planning for Federal Sustainability in the Next Decade.

The objective of the rule is to identify opportunities to reduce supply chain emissions, develop and implement procurements that incorporate consideration of those emissions, and develop an accurate annual inventory that includes contractor GHG management practices, greater insight into the scope of GHG management by companies seeking to do business with the Federal Government is needed. The legal basis for the rule is E.O. 13693.

As only those entities that received Federal contract awards in excess of \$7.5 million in the

preceding Federal fiscal year are required to make the representation, we anticipate this rule will apply to approximately 2,700 small businesses based on Fiscal Year 15 Federal Procurement Data System data.

The rule proposes a representation, voluntary for entities who received under \$7.5 million in contract awards in the Federal fiscal year before making the representation, to indicate if and where they publicly disclose GHG emissions and GHG reduction goals or targets. There is no requirement for such public disclosure.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

The impact of this rule on small entities has been minimized because entities need only make the representation if they received over \$7.5 million in Federal contract awards in the prior Federal fiscal year before making the representation.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments

separately and should cite 5 U.S.C 610 (FAR Case 2015-024), in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning the disclosure of greenhouse gas emissions and reduction goals to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 5,500.

Responses per respondent: 1.

Total annual responses: 5,500.

Preparation hours per response: .25.

Total response burden hours: 1,375.

B. Request for Comments Regarding Paperwork Burden.
Submit comments, including suggestions for reducing this

burden, not later than **[insert date 60 days after date of publication in the FEDERAL REGISTER]** to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001. Please cite OMB Control Number 9000-0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation, in all correspondence.

List of Subjects in 48 CFR Parts 1, 4, 23, and 52

Government procurement.

Dated: May 19, 2016.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, the DoD, GSA, and NASA propose amending 48 CFR parts 1, 4, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 4, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 by adding to the table FAR segment "52.223-ZZ" and its corresponding OMB control number "9000-XXXX" in numerical order.

PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.1202 by redesignating paragraphs (a) (23) through (31) as paragraphs (a) (24) through (32), respectively; and adding new paragraph (a) (23) to read as follows:

4.1202 Solicitation provision and contract clause.

(a) * * *

(23) 52.223-ZZ, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.000 [Amended]

4. Amend section 23.000 by removing from the end of the introductory paragraph "vehicles by-" and adding "vehicles." in its place; and removing paragraphs (a) through (g).

23.001 [Amended]

5. Amend section 23.001 by removing from the definition "Greenhouse gases" "perflourocarbons, and" and adding "perflourocarbons, nitrogen triflouride, and" in its place.

6. Revise section 23.800 to read as follows:

23.800 Scope of subpart.

This subpart-

(a) Sets forth policies and procedures for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances; and

(b) Addresses contractor public disclosure of greenhouse gas emissions and reduction goals.

7. Amend section 23.801 by-

a. Removing from paragraph (b) "Title" and adding "title" in its place;

b. Revising paragraph (c);

c. Removing paragraph (d); and

d. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

23.801 Authorities.

* * * * *

(c) Executive Order 13693 of March 19, 2015, Planning for Federal Sustainability in the Next Decade.

* * * * *

23.802 [Removed]

8. Remove section 23.802, as amended at 81 FR 30435 (May 16, 2016), effective June 15, 2016.

23.803 [Redesignated as 23.802]

9. Redesignate section 23.803, as amended at 81 FR 30435 (May 16, 2016), effective June 15, 2016, as section 23.802.

10. Add new section 23.803, as amended at 81 FR 30435 (May 16, 2016), effective June 15, 2016, to read as follows:

23.803 Contractor public disclosure of greenhouse gas emissions and reduction goals.

(a) It is the policy of the Federal Government to lead efforts to reduce greenhouse gas emissions at the Federal level in accordance with Executive Order 13693 and the President's Climate Action Plan of June 2013.

(b) In order to enable the Federal Government to better understand both direct and indirect greenhouse gas

emissions that result from Federal activities, the Federal Government requires offerors that received Federal contracts that equal \$7.5 million or more in the prior Federal fiscal year to represent whether they publicly disclose greenhouse gas emissions and/or a quantitative greenhouse gas emissions reduction goal, and provide the website for any such disclosures.

11. Amend section 23.804, as amended at 81 FR 30436 (May 16, 2016), effective June 15, 2016 by-

- a. Revising the section heading;
- b. Redesignating paragraphs (a) and (b) as paragraphs (a) (1) and (2);
- c. Redesignating the introductory text as paragraph (a) and revising it; and
- d. Adding new paragraph (b).

The revisions and addition read as follows:

23.804 Contract provision and clauses.

(a) Except for contracts that will be performed outside the United States and its outlying areas, the contracting officer shall insert the following clauses:

* * * * *

(b) The provision at 52.223-ZZ, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation, is required as an annual representation

when 52.204-7, System for Award Management, is included in the solicitation (see 52.204-8, Annual Representations and Certifications). Contracting officers shall not separately include the provision at 52.223-ZZ in solicitations that do not include the provision at 52.204-7.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Amend section 52.204-8 by—

- a. Revising the date of the provision;
- b. Redesignating paragraphs (c)(1)(xvii) through (xxii) as paragraphs (c)(1)(xviii) through (xxiii), respectively; and
- c. Adding new paragraph (c)(xvii).

The revision and addition read as follows:

52.204-8 Annual Representations and Certifications.

* * * * *

ANNUAL REPRESENTATIONS AND CERTIFICATIONS

(DATE)

* * * * *

(c)(1) * * *

(xvii) 52.223-ZZ, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. This provision applies to solicitations that include the clause at 52.204-7.)

* * * * *

13. Amend section 52.212-3 by-

a. Revising the date of the provision;

b. Removing from the introductory paragraph of the clause and paragraph (b) (2) "(c) through (r)" and adding "(c) through (s)" in its place; and

c. Adding paragraph (s).

The revision and addition read as follows:

52.212-3 Offeror Representations and Certifications-

Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS-COMMERCIAL ITEMS (DATE)

* * * * *

(s) Public Disclosure of Greenhouse Gas Emissions and Reduction Goals. Applies in all solicitations that require offerors to register in SAM (52.212-1(k)). Offeror to check applicable block(s) in paragraph (s) (1) or (2).

(1) Response to this provision is optional if the Offeror received less than \$7.5 million in contract awards in the Federal fiscal year preceding any representation.

(2) Representation. (i) The Offeror (itself or through its immediate owner or highest-level owner) publicly [] does, [] does not disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory,

performed in accordance with the Greenhouse Gas Protocol Corporate Standard or equivalent standard. A publicly accessible website includes the supplier's own website or via a recognized, third-party greenhouse gas emissions reporting program.

(ii) The Offeror (itself or through its immediate owner or highest-level owner) [] does, [] does not disclose a quantitative greenhouse gas emissions reduction goal, i.e., a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(3) If the Offeror checked "does" in paragraphs (s)(2)(i) or (s)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported: _____

(End of provision)

52.223-11 [Amended]

14. Amend section 52.223-11 by removing from the introductory paragraph "in 23.804(a)" and adding "in 23.804(a)(1)" in its place.

52.212-12 [Amended]

15. Amend section 52.223-12 by removing from the introductory paragraph "in 23.804(b)" and adding "in 23.804(a)(2)" in its place.

16. Add section 52.223-ZZ to read as follows:

52.223-ZZ Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

As prescribed in 23.804(b), insert the following provision:

PUBLIC DISCLOSURE OF GREENHOUSE GAS EMISSIONS AND REDUCTION GOALS—
REPRESENTATION (**DATE**)

(a) Response to this provision is optional if the Offeror received less than \$7.5 million in contract awards in the Federal fiscal year preceding any representation.

(b) Representation. [Offeror to check applicable blocks in (1) or (2).]

(1) The Offeror (itself or through its immediate owner or highest-level owner) publicly [] does, [] does not disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with the Greenhouse Gas Protocol Corporate Standard or equivalent standard. A publicly accessible website includes the supplier's own website or via a recognized, third-party greenhouse gas emissions reporting program.

(2) The Offeror (itself or through its immediate owner or highest-level owner [] does, [] does not disclose a quantitative greenhouse gas emissions reduction goal, i.e., a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(c) If the Offeror checked "does" in paragraphs (b) (1) or (b) (2) of this provision respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported:_____.

(End of provision)

Billing Code: 6820-EP

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