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**DEPARTMENT OF STATE**

**22 CFR Parts 120, 123 and 126**

**[Public Notice: 9811]**

**RIN 1400-AE07**

**International Traffic in Arms Regulations: International Trade Data System, Reporting**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State amends the International Traffic in Arms Regulations (ITAR) to enable U.S. Customs and Border Protection (CBP) to implement the International Trade Data System (ITDS), which will allow businesses to electronically submit the data required to import or export cargo, as provided by Executive Order 13659 and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act).

**DATES:** This final rule is effective on December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; email [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov). ATTN: International Trade Data System, reporting.

**SUPPLEMENTARY INFORMATION:** The Directorate of Defense Trade Controls (DDTC) of the Department of State regulates the export and temporary import of defense-related goods and defense services under the Arms Export Control Act (AECA) and its implementing regulations, the International Traffic in Arms Regulations (ITAR). This rule is being issued to conform DDTC's regulations to ITDS, "an electronic information exchange capability, or 'single window,' through which businesses will transmit data required by participating agencies for the importation or exportation of cargo" (Executive Order 13659, Sec. 3, Feb. 19, 2014). Executive Order 13659 requires government-wide implementation of ITDS by December 31, 2016. Additionally, Section 405 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) mandates agency participation in ITDS for all Federal agencies that have oversight of imports and exports. A consortium of 47 Federal agencies led by CBP are implementing ITDS.

ITDS represents a shift in the way that imports and exports are declared to CBP by importers and exporters engaged in international commerce. Traders will only need to create and submit a single set of data for each import or export, thus significantly reducing the paperwork and reporting burden currently experienced by importers and exporters.

Beginning on December 31, 2016, traders will access the ITDS system via an integrated web portal hosted by CBP. Users may visit <https://www.cbp.gov/trade/automated> for more information on the single portal.

Through the CBP Partner Government Agency (PGA) program, DDTC promulgated a PGA Message Set that requires traders to enter data relevant to DDTC's jurisdiction. Beginning December 31, 2016, when declaring permanent or temporary exports and/or temporary imports of defense articles controlled by the U.S. Munitions List (USML), traders will input data relevant to DDTC in CBP's electronic system(s). CBP will transmit the relevant shipment details to DDTC via an electronic data exchange, eliminating the need for traders to notify DDTC separately.

This rule amends pertinent provisions throughout the ITAR to reflect this new submission mechanism and allow for successor systems to be put in place.

This rule will make the following changes to the ITAR (22 CFR Parts 120-130):

*Section 120.28 – Listing of forms referred to in this subchapter.*

Section 120.28 is revised to strike the reference to the Automated Export System and add, in its place, “U.S. Customs and Border Protection’s electronic system(s)”.

*Section 120.30 – The Automated Export System (AES).*

Section 120.30 is removed and reserved.

*Section 123.4 – Temporary import license exemptions.*

Section 123.4(d)(2) is revised to strike the reference to the Automated Export System (AES) and add, in its place, instructions to electronically file information with CBP.

*Section 123.5 – Temporary export licenses.*

Section 123.5(b) is revised to update certain reporting procedures and to clarify that license information will be submitted to CBP electronically.

*Section 123.16 – Exemptions of general applicability.*

Sections 123.16(b)(4) and (5) are revised to clarify that certifications will be sent to CBP electronically and not via hard copy.

*Section 123.17 – Exports of firearms, ammunition, and personal protective gear.*

All references to AES in §123.17 are struck and, in their place, instructions to electronically file with CBP are inserted. Additionally, § 123.17(g)(2) and (h) are revised to update certain documentation procedures.

*Section 123.22 – Filing, retention, and return of export licenses and filing of export information.*

Section 123.22 of the ITAR is revised by making certain grammatical changes and to clarify procedures for the electronic reporting of exports and temporary imports of defense articles, services, and technical data pursuant to a license or other approval. All references to AES in §123.22 are struck and, in their place, instructions to electronically file with CBP are inserted.

Section 123.22(a) is revised to clarify electronic reporting procedures for exports. Paragraphs (a)(1) and (a)(2) are also revised for clarification of certain procedures.

Section 123.22(b)(2) is revised to clarify that emergency shipment data shall no longer be required to be sent directly to DDTC, but rather be electronically declared to CBP, which will make the data available to DDTC via an electronic data exchange.

Section 123.22 (b)(3)(iii) is revised to update electronic reporting procedures for technical data and defense service exemptions.

Section 123.22(c) is revised to strike a provision relating to the return of licenses and to reorder the sub-paragraphs.

*Section 123.24 – Shipments by U.S. Postal Service.*

Section 123.24 is revised to strike references to AES and insert, in their place, instructions to electronically file with CBP. The underlying content of this section is not affected by this change.

*Section 126.4 – Shipments by or for United States government agencies.*

Section 126.4(d) is amended by revising the first sentence to account for electronic reporting, and by striking the second sentence.

*Section 126.6 – Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.*

Section 126.6(c) is revised to clarify certain procedures relating to the declaration of information to CBP, and to remove references to form DSP-94. Section 126.6(c)(5)(iii) is revised to require that the exporter provide CBP with a copy of the transportation plan under the Department of Defense National Industrial Security Program Operating Manual for shipments of classified defense articles exported pursuant to a Foreign Military Sale Letter of Offer and Acceptance. Section 126.6(c)(6)(iii) is revised to correct a punctuation error made in a previous rulemaking.

*Section 126.16 – Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.*

Section 126.16(l) is revised to strike references to the Automated Export System and insert, in their place, instructions to electronically file

with CBP. The underlying content of this section will not be affected by this change.

*Section 126.17 – Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.*

Section 126.17(l) is revised to strike references to the Automated Export System and insert, in their place, instructions to electronically file with CBP. The underlying content of this section will not be affected by this change.

## **REGULATORY ANALYSIS**

*Administrative Procedure Act.*

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. As this rule serves to implement the requirements of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347), the Department of State is publishing this final rule using the “good cause” exception to the Administrative Procedure Act, as this rule is being published to fulfill the requirements outlined in Executive Order 13659. The Department has determined that public comment on this

rulemaking would be impractical, unnecessary, and contrary to the public interest.

*Regulatory Flexibility Act.*

Because this rulemaking is exempt from Section 553 of the Administrative Procedures Act, a Regulatory Flexibility Analysis is not required and has not been prepared.

*Unfunded Mandates Reform Act of 1995.*

This rule does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996.*

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

*Executive Orders 12372 and 13132.*

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of

government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

*Executive Orders 12866 and 13563.*

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has determined that the benefits of this rulemaking outweigh any cost to the public, which the Department believes will be minimal. OMB has designated this rule non-significant.

*Executive Order 12988.*

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13175.*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

*Paperwork Reduction Act.*

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

### **List of Subjects**

*22 CFR Part 120*

Approvals, Arms and munitions, Definitions, Forms.

*22 CFR Part 123*

Arms and munitions, Exemptions, Licenses, Reporting, Shipments.

*22 CFR Part 126*

Arms and munitions, General policies and provisions.

For the reasons set forth above, title 22, chapter I, subchapter M, parts 120, 123 and 126 are amended as follows:

## **PART 120 – PURPOSE AND DEFINITIONS**

1. The authority citation for part 120 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920; Pub. L. 111-266; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

2. Amend § 120.28 (b)(2) to read as follows:

### **§ 120.28 Listing of forms referred to in this subchapter.**

\* \* \* \* \*

(b) \* \* \*

(2) Electronic Export Information submitted using U.S. Customs and Border Protection's electronic system(s).

\* \* \* \* \*

### **§120.30 [Removed and Reserved]**

3. Remove and reserve §120.30.

## **PART 123 – LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES**

4. The authority citation for part 123 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub.

L. 105-261, 112 Stat.1920; Sec. 1205(a), Pub. L. 107-228; Sec 520, Pub. L. 112-55; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

5. Section 123.4 is amended by revising paragraph (d)(2) to read as follows:

**§ 123.4 Temporary import license exemptions.**

\* \* \* \* \*

(d) \* \* \*

(2) At the time of export, in accordance with the U.S. Customs and Border Protection (CBP) procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer's behalf, must electronically file the export information with CBP, identify 22 CFR 123.4 as the authority for the export, and provide, as requested by CBP, the entry document number or a copy of the CBP document under which the article was imported.

6. Section 123.5 is amended by revising the last three sentences of paragraph (b) to read as follows:

**§ 123.5 Temporary export licenses.**

\* \* \* \* \*

(b) \* \* \* The license for temporary export must be electronically submitted to U.S. Customs and Border Protection, unless electronic reporting of such

information is unavailable, in which case U.S. Customs and Border Protection will issue instructions. In the event a physical license is required by U.S. Customs and Border Protection, the licensee is to retain the duly endorsed license for temporary export in accordance with § 123.22(b) of this subchapter. In the case of a military aircraft or vessel temporarily exported under its own power, evidence that the Department of State has duly authorized it to leave the United States must be readily available on board the aircraft or vessel.

\* \* \* \* \*

7. Section 123.16 is amended by revising the penultimate sentence of paragraph (b)(4), and the last sentence of paragraph (b)(5), to read as follows:

**§ 123.16 Exemptions of general applicability.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* U.S. persons who avail themselves of this exemption must electronically submit a certification to U.S. Customs and Border Protection that these conditions are met, unless directed by U.S. Customs and Border Protection to provide such a certification in another manner. \* \* \*

(5) \* \* \* U.S. persons who avail themselves of this exemption must electronically submit a certification to U.S. Customs and Border Protection that these conditions are met, unless directed by U.S. Customs and Border Protection to provide such a certification in another manner.

\* \* \* \* \*

8. Section 123.17 is amended by revising paragraphs (a)(2)(iii), (a)(3)(iii), (c)(1), (f)(1), the second sentence of paragraph (g)(2), and the penultimate sentence of paragraph (h) to read as follows:

**§ 123.17 Exports of firearms, ammunition, and personal protective gear.**

(a) \* \* \*

(2) \* \* \*

(iii) The exporter makes an electronic declaration to U.S. Customs and Border Protection pursuant to §123.22(a), and the exporter is eligible to export under this exemption pursuant to §120.1(c) of this subchapter, unless the electronic submission of such declaration is unavailable, in which case U.S. Customs and Border Protection will issue instructions; or

(3) \* \* \*

(iii) The exporter makes an electronic declaration to U.S. Customs and Border Protection pursuant to §123.22(a), and the exporter is eligible to export under this exemption pursuant to §120.1(c) of this subchapter, unless

the electronic submission of such declaration is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

\* \* \*

(c) \* \* \*

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the export information through CBP's electronic system(s) per §123.22 (unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions), and the articles are presented to the CBP officer for inspection;

\* \* \*

(f) \* \* \*

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the export information through CBP's electronic system(s) per §123.22 (unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions), and the articles are presented to the CBP officer for inspection;

\* \* \*

(g) \* \* \*

\* \* \*

(2) \* \* \* The person shall electronically submit documentation to this effect, along with the Internal Transaction Number from U.S. Customs and Border Protection's electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

(h) \* \* \* The person shall electronically submit documentation to this effect, along with the Internal Transaction Number using U.S. Customs and Border Protection's electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions. \* \* \*

\* \* \* \* \*

9. Section 123.22 is amended by:

- a. Revising paragraph (a);
- b. Revising paragraphs (b)(1) introductory text, (b)(2) introductory text, (b)(2)(ii), and (b)(3)(iii); and
- c. Revising paragraph (c).

The revisions read as follows:

**§ 123.22 Filing, retention, and return of export licenses and filing of export information.**

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection using its electronic system(s), or directly to the Directorate of Defense Trade Controls (DDTC), as appropriate. Before the export of any hardware, via a license or other authorization, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically submit export information to U.S. Customs and Border Protection, unless electronic reporting is unavailable, in which case U.S. Customs and Border Protection will issue instructions (*see* paragraph (b) of this section). In addition to electronically providing the export information to U.S. Customs and Border Protection before export, all mandatory supporting documentation (*e.g.* attachments, certifications, proof of filing in U.S. Customs and Border Protection's system(s) such as the Internal Transaction Number (ITN)) must be submitted electronically, unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

(1) If necessary, an export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by U.S. Customs and Border Protection.

(2) When a defense article is temporarily exported from the United States and subsequently moved from one destination authorized on a license to another destination authorized on the same or another temporary license, the applicant, or an agent acting on the applicant's behalf, must ensure that U.S. Customs and Border Protection decrements both temporary licenses to show the exit and entry of the hardware.

(b) \* \* \*

(1) Filing of export information with the U.S. Customs and Border Protection. Before exporting any hardware controlled by this subchapter using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with U.S. Customs and Border Protection in accordance with the following timelines:

\* \* \* \* \*

(2) Emergency shipments of hardware that cannot meet the pre-departure filing requirements. U.S. Customs and Border Protection may permit an emergency export of hardware by truck or air by a U.S. registered person

when the exporter is unable to comply with the Electronic Export Information (EEI) filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, must provide documentation required by the U.S. Customs and Border Protection and this subchapter. The documentation provided to U.S. Customs and Border Protection must include the Internal Transaction Number (ITN) for the shipment and must be accompanied by an explanation for urgency. The export filing via U.S. Customs and Border Protection's electronic system(s) must be made at least two hours prior to any departure by air from the United States. When shipping via ground, the filing in U.S. Customs and Border Protection's electronic system(s) must be made when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

\* \* \* \* \*

(ii) On a valid license, and the ultimate recipient and ultimate end-user identified on the license is a foreign government.

(3) \* \* \*

(iii) *Technical data and defense service exemptions.* In any instance when technical data is exported using an exemption in this subchapter (e.g.,

§§125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter must provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the U.S. Customs and Border Protection upon request.

\* \* \* \* \*

(c) *Return of licenses.* Licenses issued by the Directorate of Defense Trade Controls are subject to return requirements as follows:

(1) A license issued electronically by DDTC and electronically decremented by U.S. Customs and Border Protection through its electronic system(s) is not required to be returned to DDTC. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(2) Licenses issued by DDTC but not decremented by U.S. Customs and Border Protection through its electronic system(s) (*e.g.* oral or visual technical data releases) must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(3) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(4) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.

10. Amend §123.24 by revising paragraph (a) as follows:

**§123.24 Shipments by U.S. Postal Service**

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with U.S. Customs and Border Protection using its electronic system(s) and the license must be filed with U.S. Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package:

*“This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number) and the export has been electronically filed with U.S. Customs and Border Protection.”*

\* \* \* \* \*

**PART 126 – GENERAL POLICIES AND PROVISIONS**

11. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918; 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225,

Pub. L. 108-375; Sec. 7089, Pub. L. 111-117, Pub. L. 111-266; Section 7045, Pub. L. 112-74; Section 7046, Pub. L. 112-74; E.O. 13637, 78 FR 16129.

12. Section 126.4 is amended by revising paragraph (d) as follows:

**§ 126.4 – Shipments by or for United States Government agencies.**

\* \* \* \* \*

(d) An Electronic Export Information (EEI) filing, and a statement by the exporter that these requirements have been met, must be submitted to U.S. Customs and Border Protection using its electronic system(s) at the time of export, unless electronic submission of such information is unavailable, in which case U.S. Customs and Border Protection or the Department of Defense transmittal authority will issue instructions.

13. Section 126.6 is amended by revising paragraphs (c)(5)(ii), (c)(5)(iii), and (c)(6)(iii) as follows:

**§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) At the time of shipment, U.S. Customs and Border Protection is provided the Electronic Export Information, Internal Transaction Number and any other documents required by U.S. Customs and Border Protection in carrying out its responsibilities. The invoices for the shipment must be annotated: “This shipment is authorized for export pursuant to 22 CFR 126.6(c), under FMS Case [insert case identification]. The U.S. Government point of contact is \_\_\_\_\_, telephone number \_\_\_\_\_,” and

(iii) Any classified hardware and related technical data involved in the transfer must have the requisite U.S. Government security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual. The exporter shall provide an electronic copy of the transportation plan via the U.S. Customs and Border Protection’s electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions, or

(6) \* \* \*

(iii) In instances when the defense service involves the transfer of classified technical data, the U.S. person transferring the defense service must have the appropriate USG security clearance and a transportation plan, if appropriate,

in compliance with the Department of Defense National Industrial Security Program Operating Manual.

14. Section 126.16 is amended by revising paragraphs (l)(1)(xv) and (l)(2) introductory text to read as follows:

**§ 126.16 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.**

\* \* \* \* \*

(1) \* \* \*

(1) \* \* \*

(xv) The Internal Transaction Number for the Electronic Export Information filing using U.S. Customs and Border Protection's electronic system(s);

\* \* \* \* \*

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and Australia and this section must electronically file Electronic Export Information (EEI) using U.S. Customs and Border Protection's electronic system(s), citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

\* \* \* \* \*

15. Section 126.17 is amended by revising paragraphs (l)(1)(xv) and (l)(2)introductory text to read as follows:

**§ 126.17 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.**

\* \* \* \* \*

(l) \* \* \*

(1) \* \* \*

(xv) The Internal Transaction Number for the Electronic Export Information filing using U.S. Customs and Border Protection's electronic system(s);

\* \* \* \* \*

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section must electronically file Electronic Export Information (EEI) using U.S. Customs and Border Protection's electronic system(s), citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

\* \* \* \* \*

Dated: December 23, 2016

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Thomas Countryman,

Under Secretary (Acting),  
Arms Control and International Security,  
Department of State.

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