



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0217; FRL-10011-51-Region 4]

Air Plan Approvals; KY; Prevention of Significant Deterioration and Modeling

Infrastructure Requirements for 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the Kentucky infrastructure State Implementation Plan (SIP) submission for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) submitted to EPA on January 11, 2019. Whenever EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires that states adopt and submit a SIP submission to establish that the state's implementation plan meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. Specifically, EPA is proposing to approve portions of the Kentucky infrastructure SIP submission that address the prevention of significant deterioration (PSD) and modeling requirements for the 2015 8-hour ozone NAAQS. EPA is proposing to approve these portions of the submission as they are consistent with the CAA.

DATES: Comments must be received on or before **[Insert date 21 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No EPA-R04-OAR-2019-0217, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information

you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to make a SIP submission to address the implementation, maintenance, and enforcement of the NAAQS and the applicable requirements of section 110(a)(2) of the CAA within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program

requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.”¹ States were required to make such SIP submissions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.

EPA is proposing to approve the portions of Kentucky’s January 11, 2019,² SIP submission provided to EPA through the Kentucky Division of Air Quality (KY DAQ) that address the PSD-related infrastructure SIP requirements for major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prohibiting interference with PSD in other states), 110(a)(2)(J) and the modeling infrastructure requirements of 110(a)(2)(K) for the 2015 8-hour ozone NAAQS. These provisions are discussed in further detail in Sections IV and V of this proposed action. All other applicable infrastructure SIP requirements for the 2015 ozone NAAQS have been or will be addressed in separate rulemakings.

II. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?

As discussed in section I, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIP submissions that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on

¹ In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² The Commonwealth of Kentucky submitted its infrastructure submission through the State Planning Electronic Collaboration System on January 9, 2019; however, the cover letter of the submittal is dated January 11, 2019.

infrastructure submissions.³ Unless otherwise noted in the following sections, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁴ EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, and so forth that comprise its SIP.

III. What are the Infrastructure Requirements for PSD-related Elements and Modeling Elements for Kentucky?

Detailed explanations of the specific infrastructure requirements addressed by this proposed rulemaking are provided in the following discussion. As mentioned, this proposed action only addresses the PSD and modeling infrastructure requirements for the 2015 8-hour ozone NAAQS. All other infrastructure requirements for Kentucky for the 2015 8-hour ozone NAAQS have been or will be addressed through separate rulemakings.

a. PSD-related Elements

Section 110(a)(2)(C) of the Act has three components that must be addressed in infrastructure SIP submissions: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and PSD permitting of new major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by the CAA title I part C (*i.e.*, the major source PSD program).

³ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on the Kentucky infrastructure SIP to address the 2010 Nitrogen Dioxide NAAQS. *See* 81 FR 41488 (November 21, 2016).

⁴ *See* *Mont. Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

Section 110(a)(2)(D)(i) of the Act has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as “prongs,” that states must address in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”), or interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

Section 110(a)(2)(J) of the Act has four components related to: 1) consultation with government officials, 2) public notification, 3) PSD, and 4) visibility protection.

This proposed rulemaking addresses the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J). With respect to the PSD elements of 110(a)(2)(C) and (J), EPA interprets the CAA to require each state to make, for each new or revised NAAQS, an infrastructure SIP submission that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated new source review (NSR) pollutants. The requirements of element 110(D)(i)(II) (prong 3) may also be satisfied when the state’s submission demonstrates that the air agency has a complete PSD permitting program addressing all regulated NSR pollutants. More information on these requirements and EPA’s rationale for this proposal that Kentucky is meeting these requirements for purposes of the 2015 8-hour ozone NAAQS is provided in sections IV and V of this preamble.

b. Modeling Element

Section 110(a)(2)(K) of the CAA requires that SIPs provide for the performance of air quality modeling as prescribed by the EPA so that air quality effects from emissions of NAAQS pollutants and their precursors can be predicted, and for submission of such data to EPA. More information on this requirement and EPA's rationale for this proposal that Kentucky is meeting this requirement for purposes of the 2015 8-hour ozone NAAQS is provided in sections IV and V of this preamble.

IV. Applicability of Appendix W for Infrastructure Requirements for 2015 8-hour Ozone NAAQS

On January 17, 2017, EPA promulgated a final rule entitled "*Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter*" (also referred to as the 2017 *Guideline*).⁵ See 82 FR 5182. The preamble to the 2017 *Guideline*, in the 'Dates' section says:

For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to the appendix A preferred models and revisions to the requirements and recommendations of the Guideline must be integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018.

For purposes of infrastructure SIP requirements, regulatory applications of the *Guideline* include the PSD elements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J).

⁵ EPA's *Guideline on Air Quality Models* is codified at 40 CFR part 51, appendix W and is generically referred to as *Guideline* herein.

EPA's PSD regulations at 40 CFR 51.166(l) require SIP PSD programs to base air quality modeling on the *Guideline*. States were required to integrate the 2017 *Guideline* into their PSD programs by January 17, 2018. Additionally, a state may also rely on the 2017 *Guideline* to satisfy the modeling requirements of Section 110(a)(2)(K).

The most direct way for states to meet this requirement is to integrate the 2017 *Guideline* is to revise the regulations in their SIP to incorporate the 2017 *Guideline*. However, a state may also meet this requirement by showing that its existing SIP-approved regulations provide the state with the authority to integrate and implement the requirements and recommendations of the current version of EPA's *Guideline* (i.e. those reflected in the 2017 *Guideline*). Of most relevance here, all versions of the *Guideline*, including 2017 and earlier versions, as well as 40 CFR 51.166(l), allow the use of an "alternative model" if the state or permit applicant demonstrates to EPA that the alternative is equivalent to or an improvement over "preferred models" in the *Guideline*. As EPA made clear in promulgating the 2017 *Guideline*, the 2017 version incorporated and approved air quality models with scientific updates and associated model performance improvements relative to the preferred models in earlier versions of the *Guideline*. Thus, states with references to earlier versions of the *Guideline* may be able to rely upon their authority to use alternative models, in conjunction with the EPA's rulemaking record from the 2017 *Guideline*, to use an updated model.

V. What is EPA's Analysis of How Kentucky Addressed Relevant Portions of PSD-related Elements and Modeling Elements for the 2015 8-hour Ozone NAAQS?

EPA's analysis of Kentucky's January 11, 2019, infrastructure SIP submission, as further clarified in a February 4, 2020, letter, related to the PSD and modeling elements for the 2015 8-hour ozone NAAQS is provided in this section.

a. PSD-related Elements

As discussed, this proposed rulemaking relates to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J). In this section, EPA provides its analysis of these three sub-elements.

1. 110(a)(2)(C) Program for Construction or Modification of Stationary Sources (PSD)

For the PSD program sub-element of section 110(a)(2)(C), EPA interprets the CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place meeting applicable PSD requirements for all regulated NSR pollutants. As detailed in EPA's September 2013 infrastructure SIP guidance, a state's PSD permitting program is complete for this sub-element (and prong 3 of D(i)(II), and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submission.

Kentucky's infrastructure SIP submission cites several SIP-approved regulations under Chapters 50 and 51, including the following: 401 KAR 51:010,⁶ *Attainment status designations*; 401 KAR 51:017, *Prevention of significant deterioration of air quality*; and 401 KAR 50:040, *Air quality models*, to meet the PSD program requirements of section 110(a)(2)(C). These SIP-approved regulations provide that new major sources and major modifications in areas of the Commonwealth designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA.

⁶ Throughout this rulemaking, unless otherwise indicated, the term "Kentucky Administrative Regulations" or "KAR" indicates that the cited regulation has been approved into Kentucky's federally-approved SIP.

As discussed, EPA’s PSD regulations at 40 CFR 51.166(l) require states to conduct modeling in accordance with the *Guideline*, and EPA required states to integrate the 2017 *Guideline* into their regulatory process by January 17, 2018. Therefore, to meet current structural PSD requirements, Kentucky is required to use the 2017 *Guideline* for PSD modeling or provide a demonstration that use of an alternative model equivalent to or an improvement over the EPA-preferred model is being utilized.

The Kentucky SIP at 401 KAR 51:017 establishes the Commonwealth’s PSD program and requires that modeling follow the EPA’s *Guideline on Air Quality Models*. Additionally, 401 KAR 50:040 – *Air Quality Models* – provides that “[a]ll estimates of ambient concentrations required under the administrative regulations of the Division for Air Quality shall be based on the applicable air quality models, data bases, and other requirements specified in the ‘Guidelines on Air Quality Models’ (OAQPS 1.2-080, U. S. EPA, Office of Air Quality Planning and Standards).” Kentucky’s SIP-approved rule 401 KAR 50:015 provides incorporations by reference for documents and federal regulations referenced in the Commonwealth’s air quality rules and incorporates the 1986 version of the *Guideline*.

On February 4, 2020, KY DAQ provided to EPA a letter related to the use of EPA’s *Guideline*, clarifying that, pursuant to 401 KAR 50:040 and 401 KAR 51:017, the Commonwealth has the authority to use alternative modeling, and that modeling based on the *Guideline*, as published on January 17, 2017, is the most appropriate.⁷ Specifically, KY DAQ explains in the letter that 401 KAR 50:040, Section 1(2) states: “Where an air quality impact

⁷ See February 4, 2020, letter “RE: Clarification of the use of appendix W within Kentucky’s 2015 8-hour Ozone Infrastructure SIP submittal” from Melissa Duff, Director of Division of Air Quality for Kentucky Energy and Environment Cabinet, Department of Environmental Protection to Mary S. Walker, Regional Administrator for U.S. Environmental Protection Agency, Region 4. The February 4, 2020, letter is in the docket for this proposed rulemaking.

model specified in the ‘Guideline on Air Quality Models’ is inappropriate, the model may be modified or another model substituted subject to the approval of the cabinet.”⁸ Additionally, KY DAQ explains that 401 KAR 51:017, Section 10(2) states: “If an air quality model specified in 40 CFR part 51, appendix W, is inappropriate, the model may be modified or another model substituted.” KY DAQ concludes that “[i]n accordance with these provisions, the Division has made a determination that the most appropriate air quality modeling guidance to use is the version of 40 CFR part 51, appendix W, as published January 17, 2017.”

As we have explained, states with references to earlier versions of the *Guideline* may be able to rely upon their authority under the earlier versions of the *Guideline* to use alternative models, in conjunction with the EPA’s regulatory record from the 2017 *Guideline*, to establish their authority to use the 2017 *Guideline*. EPA has evaluated Kentucky’s January 11, 2019, submittal and the February 4, 2020, letter and is proposing to make the determination that Kentucky has demonstrated that it has the authority to use the 2017 *Guideline*, and notes that the February 4, 2020, letter includes KY DAQ’s determination that the 2017 *Guideline* is most appropriate for use. Accordingly, EPA is proposing to approve Kentucky’s use of the 2017 *Guideline* as outlined in KY DAQ’s February 4, 2020, letter and is proposing to find that Kentucky’s infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the Commonwealth designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements. Thus, EPA is proposing to conclude that Kentucky’s infrastructure SIP

⁸ Section 3 of the *Guideline* and the PSD rules at 40 CFR 51.166(l)(2) allow the use of alternative models upon approval by Regional Administrators.

submission, supplemented with the February 4, 2020, letter, meets the requirements of 110(a)(2)(C) for the infrastructure requirements for the 2015 8-hour ozone NAAQS.

2. 110(a)(2)(D)(i)(II) – prong 3

With regard to prong 3 of CAA section 110(a)(2)(D)(i)(II), a state may meet this requirement by a confirmation in its infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C and a nonattainment NSR (NNSR) program, if the state contains a nonattainment area that has the potential to impact PSD in another state. To meet the requirements of prong 3 of CAA section 110(a)(2)(D)(i)(II), Kentucky cites to its PSD program found in the Kentucky SIP at 401 KAR 51:017, *Prevention of significant deterioration of air quality*, and 401 KAR 50:040, *Air quality models*, in addition to the following SIP-approved regulations: 401 KAR 51:010, *Attainment status designations*; 401 KAR 51:052, *Review of new sources in or impacting upon nonattainment areas*; and 401 KAR 52:100, *Public, affected state, and US EPA Review*. As already discussed in more detail in the CAA section 110(a)(2)(C) section of this document, Kentucky’s SIP contains the relevant provisions to satisfy the current structural PSD requirements to meet prong 3 and a SIP-approved NNSR program at 401 KAR 51:052, *Review of new sources in or impacting upon nonattainment areas* to address prong 3 for any areas of the Commonwealth designated as nonattainment. EPA is proposing to determine that Kentucky’s SIP is adequate for permitting of major sources and major modifications to prevent interference with PSD in other states related to the 2015 8-hour ozone NAAQS for CAA section 110(a)(2)(D)(i)(II) (prong 3).

3. 110(a)(2)(J) PSD

With regard to the PSD element of CAA section 110(a)(2)(J), this requirement is met by a state's confirmation in an infrastructure SIP submission that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all regulated NSR pollutants. To meet element J, Kentucky's infrastructure SIP submission cites to a number of SIP-approved regulations including 401 KAR 51:017, *Prevention of significant deterioration of air quality*. As already discussed in more detail in the CAA section 110(a)(2)(C) section of this document, Kentucky's SIP contains the relevant provisions to satisfy the structural PSD requirements of CAA section 110(a)(2)(J). EPA is proposing to determine that Kentucky's SIP is adequate for the PSD element of CAA section 110(a)(2)(J).

b. 110(a)(2)(K) Modeling Element

Section 110(a)(2)(K) of the CAA requires that SIPs provide for the performance of air quality modeling as prescribed by the EPA so that air quality effects of emissions of NAAQS pollutants and their precursors can be predicted, and for submission of such data to EPA. KY DAQ conducts air quality modeling as set forth in Kentucky's regulation, 40 KAR 50:040, *Air Quality Models* and reports the results of such modeling to EPA. Kentucky's SIP submission also refers to a number of other SIP-approved regulations to demonstrate that it meets the requirements of CAA section 110(a)(2)(K). 40 KAR 50:040, *Air Quality Models* provides that “[a]ll estimates of ambient concentrations required under the administrative regulations of the Division for Air Quality shall be based on the applicable air quality models, data bases, and other requirements specified in the ‘Guidelines on Air Quality Models’ (OAQPS 1.2-080, U. S. EPA, Office of Air Quality Planning and Standards).” KY DAQ uses ambient ozone modeling, in conjunction with pre- and post-construction ambient air monitoring to track local and regional scale changes in ozone concentrations. As already discussed in the CAA section 110(a)(2)(C)

section of this document, KY DAQ has provided assurances that it has the authority and intention to use the 2017 *Guideline* under this regulatory provision.

Additionally, the Commonwealth supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, the Commonwealth's air quality regulations and practices demonstrate that KY DAQ has the authority to provide relevant data through the performance of modeling as prescribed by EPA for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to EPA's Administrator upon request. EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to CAA section 110(a)(2)(K).

VI. Proposed Action

EPA is proposing to approve the portions of Kentucky's January 11, 2019, 2015 8-hour ozone infrastructure SIP submission that address the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and modeling requirements related to CAA section 110(a)(2)(K). All other applicable infrastructure requirements for the 2015 ozone NAAQS have been or will be addressed in separate rulemakings.

VII. Statutory Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely

proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant regulatory action under Executive Order 12866;
- Does not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 23, 2020.

Mary Walker,
Regional Administrator,
Region 4.

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