

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation would not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects 42 CFR in Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 455—PROGRAM INTEGRITY; MEDICAID

1. The authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 455.1, add new paragraph (c) to read as follows:

§ 455.1 Basis and scope.

* * * * *

(c) Subpart C implements section 1936 of the Act. It establishes the Medicaid Integrity Program under which the Secretary will promote the integrity of the program by entering into contracts with eligible entities to carry out the activities of subpart C.

3. New subpart C, consisting of § 455.200 and § 455.202, is added to part 455 to read as follows:

Subpart C—Medicaid Integrity Program

Sec.

455.200 Basis and scope.

455.202 Limitation on contractor liability.

Subpart C—Medicaid Integrity Program

§ 455.200 Basis and scope.

(a) *Statutory basis.* This subpart implements section 1936 of the Act that establishes the Medicaid Integrity Program under which the Secretary will promote the integrity of the program by entering into contracts with eligible entities to carry out the activities under this subpart C.

(b) *Scope.* This subpart provides for the limitation on a contractor's liability to carry out a contract under the Medicaid Integrity Program.

§ 455.202 Limitation on contractor liability.

(a) A program contractor, a person, or an entity employed by, or having a fiduciary relationship with, or who furnishes professional services to a program contractor will not be held to have violated any criminal law and will not be held liable in any civil action, under any law of the United States or of any State (or political subdivision thereof), by reason of the performance of any duty, function, or activity required or authorized under this subpart or under a valid contract entered into under this subpart, provided due care was exercised in that performance and the contractor has a contract with CMS under this subpart.

(b) CMS pays a contractor, a person, or an entity described in paragraph (a) of this section, or anyone who furnishes legal counsel or services to a contractor or person, a sum equal to the reasonable amount of the expenses, as determined by CMS, incurred in connection with the defense of a suit, action, or proceeding, if the following conditions are met:

(1) The suit, action, or proceeding was brought against the contractor, person or entity by a third party and relates to the contractor's, person's or entity's performance of any duty, function, or activity under a contract entered into with CMS under this subpart.

(2) The funds are available.

(3) The expenses are otherwise allowable under the terms of the contract.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 15, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 20, 2007.

Michael O. Leavitt,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070607179-7312-01]

RIN 0648-AV66

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-Pollock Groundfish Fishery, Industry Fee System

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement an industry fee system for repaying a \$35 million Federal loan financing a fishing capacity reduction program in the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery. This action's intent is to implement a fee collection system to ensure repayment of the loan.

DATES: Comments on this proposed rule must be received by August 20, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: 0648-AV66.FeeSystem@noaa.gov. Include in the subject line the following identifier: "Longline catcher processor buyback fee system proposed rule." E-mail comments, with or without attachments, are limited to 5 megabytes;

- Federal e-Rulemaking Portal: <http://www.regulations.gov>;

- Mail to: Leo Erwin, Chief, Financial Services Division, NMFS-MB5, 1315 East-West Highway, Silver Spring, MD 20910; or

- Fax to 301-713-1306.

Comments involving the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted in writing to Leo Erwin, at the above address, and to David Rostker, Office of Management and Budget (OMB), by email at David_Rostker@omb.eop.gov or by fax to 202 395 7285.

Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the program may be obtained from Leo Erwin at the above address.

FOR FURTHER INFORMATION CONTACT: Leo Erwin at 301-713 2390.

SUPPLEMENTARY INFORMATION:

Background

Sections 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorized fishing capacity reduction programs. In particular, section 312(d) authorized industry fee systems for repaying the reduction loans which finance reduction program costs. Subpart L of 50 CFR part 600 is the framework rule generally implementing sections 312(b)-(e). Subpart M of 50 CFR part 600 contains specific fishery or program regulations.

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorized reduction loans.

The FY 2005 Appropriations Act (Public Law 108-447, Section 219) authorized a fishing capacity reduction program for the longline catcher processor subsector of the BSAI non-pollock groundfish fishery (reduction fishery).

NMFS published the longline catcher processor subsector BSAI non-pollock reduction program's (reduction program) proposed implementation rule on August 11, 2006 (71 FR 46364) and its final rule on September 29, 2006 (71 FR 57696). Anyone interested in the reduction program's full implementation details should refer to these two documents. NMFS proposed and adopted the reduction program's implementation rule as § 600.1105 of subpart M of 50 CFR part 600.

The reduction program's objectives include promoting sustainable fishery management and maximum sustained reduction of fishing capacity from the reduction fishery at the least cost. This is a voluntary program in which, in return for reduction payments, selected offerors permanently relinquished their fishing licenses, surrendered the fishing histories upon which those licenses' issuance were based, and permanently withdrew vessels from fishing.

NMFS financed the reduction program's \$35 million cost, which post-reduction BSAI non-pollock groundfish longline catcher processors repay over an anticipated 30-year term but fees will continue indefinitely for as long as necessary to fully repay the loan.

The fee amount, expressed in cents per pound rounded up to the next one-tenth of a cent, will be based upon the annual principal and interest due on the loan and could be up to 5 percent of longline catcher processor subsector BSAI Pacific cod landings. In the event

that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, an additional fee of one penny per pound will be assessed for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

The Freezer Longline Conservation Cooperative (FLCC) received member offers and subsequently voted to accept four offers. The FLCC submitted a fishing capacity reduction plan (reduction plan) subsequently approved by NMFS. A referendum concerning the fees necessary for repayment of the \$35 million loan followed the offer and acceptance process. Approval of the industry fee system required at least two-thirds of the votes cast in the referendum to be in favor before the reduction program could be implemented and payment tendered.

NMFS mailed ballots to 39 qualified referendum voters on March 21, 2007, after approving the reduction plan. The voting period opened on March 21, 2007, and closed on April 6, 2007. NMFS received 34 timely and valid votes. All of the votes approved the fees. This exceeded the two-thirds minimum required for industry fee system approval. Consequently, this referendum was successful and approved the industry fee system.

On April 26, 2007, NMFS published a **Federal Register** notice (72 FR 20836) advising the public that NMFS would, beginning on May 29, 2007, tender the reduction program's reduction payments to the four selected offerors. On May 29, 2007, NMFS required the selected offerors to permanently stop all fishing with the reduction vessels and permits. Subsequently, NMFS:

1. Disbursed \$35,000,000 in reduction payments to the four selected offerors;
2. Revoked the relinquished reduction licenses;
3. Revoked each reduction vessel's fishing history;
4. Notified the National Vessel Documentation Center to revoke the reduction vessels' fishery trade endorsements and appropriately annotate the reduction vessel's document; and
5. Notified the U.S. Maritime Administration to prohibit the reduction vessel's transfer to foreign ownership or registry.

Selected offerors participating in the reduction program have received \$35 million in exchange for relinquishing valid non-interim Federal License Limitation Program BSAI groundfish licenses endorsed for catcher processor fishing activity, catcher/processor, Pacific cod, and hook and line gear, as well as any present or future claims of

eligibility for any fishing privilege based on such permit, and additionally, any future fishing privilege of the vessel named on the permit. Individual fishing quota shares are excluded from relinquishment.

II. Proposed Regulations

NMFS has completed the reduction program except for implementing the industry fee system which this action proposes to implement. The fee amount will be calculated on an annual basis as: the principal and interest payment amount due over the proceeding twelve months, divided by the reduction fishery portion of the BSAI Pacific cod initial total allowable catch (ITAC) allocation in metric tons multiplied by 2,205 to convert into pounds, provided that the fees should not exceed 5 percent of the average ex-vessel production value of the reduction fishery.

The terms defined in § 600.1105 of the reduction program's implementation rule and in § 600.1000 of the framework rule apply to this action.

The framework rule's § 600.1013 governs fee payment and collection in general, and this action applies the § 600.1013 provisions to the reduction program.

Under § 600.1013, the first ex-vessel buyers (fish buyers) of post-reduction fish (fee fish) subject to an industry fee system must withhold the fee from the trip proceeds which the fish buyers would otherwise have paid to the parties (fish sellers) who harvested and first sold the fee fish to the fish buyers. For the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, subsector members are deemed to be both the fish buyer and fish seller. In this case, all requirements and penalties of § 600.1013 of this subpart that are applicable to both a fish seller and a fish buyer shall equally apply to parties performing both functions.

The BSAI Pacific cod ITAC was chosen as the basis for fee calculation of the reduction program because Pacific cod is the only directed fishery with a total allowable catch set in advance of the fishing season. This methodology allows for a straightforward calculation of the fee due and simplifies future accounting. The fee will be assessed and collected on Pacific cod to the extent possible and if the amount is not sufficient to cover annual principal and interest due, additional fees will be assessed and collected. Fees will be assessed and collected on all harvested Pacific cod, including that used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel

production value of all post-reduction longline catcher processor subsector non-pollock groundfish landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term.

If the total principal and interest due exceeds five percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole. Any additional fees will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the five percent fee assessed against Pacific cod. If collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced.

To verify that the fees collected do not exceed five percent of the reduction fishery revenues, the annual total of principal and interest due will be compared with the latest available annual reduction fishery revenues to ensure it is equal to or less than five percent of the total ex-vessel production revenues. In all likelihood this will be based on State of Alaska's Commercial Operator Annual Report produced annually in the March following the close of the previous season. If any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such time that new calculations are made and communicated to the post reduction fishery participants.

The framework rule's § 600.1014 governs how fish buyers must deposit, and later disburse to NMFS, the fees which they have collected as well as how they must keep records of, and report about, collected fees. Under the framework rule's § 600.1014, fish buyers must, no less frequently than at the end of each business week, deposit collected fees through a date not more than two calendar days before the date of deposit in segregated and federally insured accounts. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month. Fee collection reports must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least 3 years and submit to NMFS annual reports of fee collection and disbursement

activities by February 1 of each calendar year.

Under § 600.1015, the late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid.

To provide more accessible services, streamline collections, and save taxpayer dollars, fish buyers may disburse collected fee deposits to NMFS by using a secure Federal system on the Internet known as *Pay.gov*. *Pay.gov* enables subsector members to use their checking accounts to electronically disburse their collected fee deposits to NMFS. Subsector members who have access to the Internet should consider using this quick and easy collected fee disbursement method. Subsector members may access *Pay.gov* by going directly to *Pay.gov*'s Federal website at: <https://www.pay.gov/paygov/>.

Subsector members who do not have access to the Internet or who simply do not wish to use the *Pay.gov* electronic system, must disburse collected fee deposits to NMFS by sending a check to our lockbox at:
NOAA Fisheries Longline Catcher Processor Non-pollock Buyback
P O Box 979060
St. Louis, MO 63197-9000

Subsector members must not forget to include with their disbursements the fee collection report applicable to each disbursement. Subsector members using *Pay.gov* will find an electronic fee collection report form to accompany electronic disbursements. Subsector members who do not use *Pay.gov* must include a hard copy fee collection report with each of their disbursements. Subsector members not using *Pay.gov* may also access the NMFS website for a PDF version of the fee collection report at: http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm.

NMFS will, before the fee's effective date, separately mail a copy of this rule, along with detailed fee payment, collection, deposit, disbursement, recording, and reporting information and guidance, to each fish seller and fish buyer of whom NMFS has notice. The fact that any fish seller or fish buyer might not, however, receive from NMFS a copy of the notice or of the information and guidance does not relieve the fish seller or fish buyer from his fee obligations under the applicable regulations.

All parties interested in this action should carefully read the following framework rule sections, whose detailed provisions apply to the fee system for repaying the reduction program's loan:

1. § 600.1012;
2. § 600.1013;
3. § 600.1014;
4. § 600.1015;
5. § 600.1016; and
6. § 600.1017.

NMFS, in accordance with the framework rule's § 600.1013(d), establishes the initial fee for the program's reduction fishery as 2.0 cents per pound. NMFS will then separately mail notification to each affected fish seller and fish buyer of whom NMFS has notice. Until this notification, fish sellers and fish buyers do not have to either pay or collect the fee.

Please see the framework rule's § 600.1000 for the definition of "delivery value" and of the other terms relevant to this proposed rule. Each disbursement of the reduction loan's \$35,000,000 principal amount began accruing interest as of the date of each such disbursement. The loan's interest rate is the applicable rate, plus 2 percent, which the U.S. Treasury determines at the end of fiscal year 2007.

III. Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, Consolidated Appropriations Act of 2005, and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an EA for the reduction program's final implementing rule (September 29, 2006; 71 FR 57696). The EA discusses the impact of this proposed rule on the natural and human environment and integrates an RIR and a FRFA. The EA resulted in a finding of no significant impact. The EA considered, among other alternatives, the implementation of the fee payment and collection in this action. NMFS will send the EA, RIR, and FRFA to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impacts this proposed rule would have on small entities. This proposed rule does not duplicate or conflict with other Federal regulations.

IRFA Analysis

The Small Business Administration has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or

fewer employees for related industries involved in canned or cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Small entities within the scope of this proposed rule include individual U.S. vessels and dealers. There are no disproportionate impacts between large and small entities.

Description of the Number of Small Entities

The IRFA uses the most recent year of data available to conduct the analysis (2003). Most firms operating in the reduction fishery have annual gross revenues of less than \$4 million. The IRFA analysis estimates that 24 of the remaining 36 active longline catcher processor vessels (i.e., 36 vessels constitute the post-reduction longline subsector) that participated in 2003 are considered small entities. The remaining 10 vessels are not considered small entities for purposes of the RFA. There is 1 additional fisherman with a permit but no vessel remaining in the longline subsector. The vessels that might be considered large entities were either affiliated under owners of multiple vessels or were catcher processors. However, little is known about the ownership structure of the vessels in the fleet, so it is possible that the IRFA overestimates the number of small entities. Because the final reduction program rule has not resulted in changes to allocation percentages and participation is voluntary, net effects are expected to be minimal relative to the status quo.

The economic impact to communities where non-pollock groundfish are landed and processed would be minimal because the harvest quotas and allocations would not be altered. Fewer vessels in the catcher processor fleet may mean that fewer on-shore fleet support services would be required in Seattle and in Dutch Harbor. The communities would see little change because total landings of non-pollock groundfish would remain at current levels. Some beneficial impacts may occur because this program has provided \$35 million to successful offerors. Much of this could be reinvested in the various communities which serve as home ports to the vessels and a portion would be recovered through income taxes. Crew employment opportunities will be reduced when vessels were removed from the fishery. However, those vessels remaining in the fishery will likely experience increased fishing opportunities and higher per capita incomes.

The proposed rule's impact will be positive for both those whose offers NMFS has accepted, the selected offerors who received payments to stop fishing, and for post-reduction catcher processors whose landing fees repay the reduction loan. The owners whose offers NMFS accepted have relinquished their fishing licenses, reduction privilege vessels where appropriate, and fishing histories in exchange for payment. These payments ranged from \$1.5 million for an inactive license that was not attached to a vessel, up to \$11.8 million for the removal of both an active license and vessel from the fishery.

Those participants remaining in the fishery after the reduction program will incur additional fees of up to 5 percent of the ex-vessel production value of post-reduction landings. However, the additional costs could be mitigated by increased harvest opportunities by post-reduction fishermen. This is because removal of the vessels from the fishery creates immediate benefits to the longline catcher processor subsector by reducing competition pressure for each of the remaining vessels to catch fish. In theory, each of the vessels retaining their fishing licenses will be able to harvest more fish. This will likely result in net benefits to the subsector members who have voluntarily assumed the additional fees necessary to repay the reduction loan.

For example, even though each vessel could, on average, pay approximately \$77,440 in fees, the net increase per vessel, on average could be approximately \$302,560 more than they would have been able to make before the reduction program's implementation due to the increased opportunity to harvest the TAC. The referendum voters also cast votes unanimously in favor of the fee collection system, which demonstrated to NMFS the involved members of the fishing community have high confidence in the cost-effectiveness of this buyback program.

This rule, when implemented, would affect neither authorized BSAI Pacific cod ITAC and other non-pollock groundfish harvest levels or harvesting practices.

NMFS rejected the no action alternative considered in the EA for the final rule implementing the reduction program because NMFS would not be in compliance with the mandate of Section 219 of the Act to establish a reduction program. In addition, the longline catcher processor subsector of the non-pollock groundfish fishery would remain overcapitalized. Although too many vessels compete to catch the current subsector ITAC allocation, fishermen remain in the fishery because

they have no other means to recover their significant capital investment. Overcapitalization reduces the potential net value that could be derived from the non-pollock groundfish resource, by dissipating rents, driving variable operating costs up, and imposing economic externalities. At the same time, excess capacity and effort diminish the effectiveness of current management measures (e.g. landing limits and seasons, bycatch reduction measures). Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities.

It has been determined that this proposed rule is not significant for purposes of Executive Order 12866.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB has approved these information collections under OMB control number 0648 AU42. NMFS estimates that the public reporting burden for these requirements will average two hours for submitting a monthly fee collection report and four hours for submitting an annual fish buyer report.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, any information collection subject to the Paperwork Reduction Act unless that information collection displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs business, Reporting and recordkeeping requirements.

Dated: July 17, 2007.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 600 as follows:

PART 600 MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Section 600.1106 is added to read as follows:

§ 600.1106 Longline catcher processor subsector Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 108 447, this section's purpose is to:

(1) In accordance with § 600.1012 of subpart L, establish:

(i) The borrower's obligation to repay a reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with §§ 600.1013 through 600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1105 of this subpart expressly apply to this section.

Reduction fishery means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery that § 679.2 of this chapter defined as groundfish area/species endorsements.

(c) *Reduction loan amount.* The reduction loan's original principal amount is \$35,000,000.

(d) *Interest accrual from inception.* Interest began accruing on the reduction loan from May 29, 2007, the date on which NMFS disbursed such loan.

(e) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2007 plus 2 percent.

(f) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from May 29, 2007, but fees shall continue indefinitely for as long as necessary to fully repay the loan.

(g) *Reduction loan repayment.* (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;

(2) For the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, subsector members are deemed to be both the fish buyer and fish seller. In

this case, all requirements and penalties of § 600.1013 of this subpart that are applicable to both a fish seller and a fish buyer shall equally apply to parties performing both functions;

(3) Subsector members in the reduction fishery shall pay and collect the fee amount in accordance with § 600.1105;

(4) Subsector members in the reduction fishery shall, in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by February 1 of each calendar year; and

(5) The reduction loan is, in all other respects, subject to the provisions of §§ 600.1012 through 600.1017.

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