



Pennsylvania Compensation Rating Bureau

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March 13, 2020

VIA SERFF

The Honorable Jessica Altman
Insurance Commissioner
Commonwealth of Pennsylvania
Insurance Department
11311 Strawberry Square
Harrisburg, PA 17120

Attention: Michael McKinney, Actuarial Supervisor, Property & Casualty Bureau

**RE: PCR B Filing No. 307 – Proposed Effective April 1, 2020
Proposed Classification Procedural Revision – Classification Applicable to
Medical Marijuana Dispensaries**

Dear Commissioner Altman:

Resulting from a staff review and on behalf of the members of the Pennsylvania Compensation Rating Bureau (PCRB), we hereby submit the proposed filing for revision to the Pennsylvania Workers' Compensation Manual of Rules, Classifications and Rating Values for Workers' Compensation and Employers Liability Insurance (Basic Manual). This revision is proposed for policies with effective dates of 12:01 a.m., April 1, 2020 or later. This proposed effective date coincides with changes resulting from PCRB's normal annual comprehensive loss cost revision, which was filed with and approved by the Insurance Department for policies effective on or after 12:01 a.m., April 1, 2020. This proposal will not impact any classification's approved PCRB loss cost, but will impact the premium of effected employers.

As background, the PCRB's classification staff began receiving telephone calls questioning the classification assignment of medical marijuana dispensaries and growing facilities as early as January of 2017. In response to those requests, PCRB recommended that Code 928 be applied to payroll developed in the operation of dispensaries and that Code 0011 be applied to payroll developed in the operation of growing facilities. Since this is a nascent industry, there was no statistical data for the PCRB to use in analyzing or evaluating what would be the initial or ultimate determination for the applicable classification. The recommendation at that time was to use Code 928 for dispensaries, based partially on the operational and regulatory information regarding such businesses provided on the Pennsylvania Department of Health's (DOH) website as well as other sources. Additionally, it was decided because Code 928 is designated "N.O.C." or "Not Otherwise Classified" and as such has a broad scope contemplating a variety of mercantile and related operations where the typical customer is the general public. Code 0011 was selected for the growing of marijuana because cannabis is a genus of flowering plant. At that time, staff advised constituents that these classification recommendations would likely be

subject to further PCRB review as warranted and as additional information and data regarding these business operations emerged.

The PCRB received correspondence from the Pennsylvania Department of Labor and Industry (L & I) (dated February 3, 2020) concerning the classification of medical marijuana dispensaries. That correspondence was prompted by an inquiry submitted to L & I by a medical marijuana dispensary operator who maintained that medical marijuana dispensaries were analogous to retail pharmacies and as such should be similarly classified to Code 927, Pharmacy. L & I's February 3, 2020 memorandum indicated agreement with the employer's position, and also provided additional regulatory and operational details in order to support the suggestion of assigning Code 927 to medical marijuana dispensaries.

Subsequently, PCRB staff participated in a conference call with representatives from L & I, the DOH and other constituents on March 10, 2020. L & I convened this conference call in an effort to obtain a better understanding of the reasoning behind PCRB's initial recommendation of Code 928 for medical marijuana dispensaries, and to also answer any remaining questions that PCRB staff may have regarding the operational characteristics of these businesses. With the benefit of the additional details and clarification provided by the DOH in the course of this conference call, staff has reconsidered the classification assignment of medical marijuana dispensaries. Staff recognizes that many of the operational characteristics of these businesses – particularly the degree of DOH regulation and oversight along with the presence and duties of on-site pharmacists (or other medical professionals) - are not typical to employers classified to Code 928. Staff concludes that these businesses are reasonably analogous to "traditional" pharmacies and therefore should be appropriately classified to Code 927.

Staff proposes that medical marijuana dispensaries be reclassified from Code 928 to Code 927 for policies with effective dates on or after April 1, 2020. As of the date of this filing, staff has identified eight medical marijuana dispensary employer files on the PCRB's database. Of those eight files, two of the dispensaries are presently classified to Code 927 and six are presently classified to Code 928. The reclassification of the six dispensaries presently classified to Code 928, moving from Code 928 to Code 927 results in a rating value decrease of 52.1% on the basis of the approved April 1, 2020 PCRB loss costs (\$0.57 for Code 927 and \$1.19 for Code 928). While this is in excess of the approved April 1, 2020 maximum permissible rating value decrease (35%), staff recommends adopting this approach in view of the operational similarities between medical marijuana dispensaries and "traditional" pharmacies.

The PCRB has not received negative comment on the current procedure of classifying medical marijuana growing facilities to Code 0011 and therefore is not proposing any revision to that procedure.

Details of this filing are provided in PCRB's March 11, 2020 memorandum, which is included as part of this filing. The memorandum describes and explains the reasoning for the proposed revision to the Basic Manual language. The memorandum was provided to the PCRB Classification and Rating Committee via mail advisory on March 11, 2020. The PCRB received three responses to the advisory, all opining in favor of staff's recommendation. Committee members who did not respond within the designated review period are considered by the PCRB as having opined in favor of the proposal.

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Thank you in advance for your review and attention to this filing. The PCRB is pleased to answer any questions that you or the Insurance Department staff may have regarding these proposals.

Sincerely,

William V. Taylor
President

Enclosure: March 11, 2020 Staff Memorandum
 Revisions to Section 2



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TO: Pennsylvania Compensation Rating Bureau (PCRB)
Classification and Rating Committee

FROM: Robert Ferrante – Senior Classification Analyst, Technical Services
PCRB Classification Department

DATE: March 11, 2020

RE: Proposed Section 2 Classification Procedural Revision – Classification
Applicable to Medical Marijuana Dispensaries

The Pennsylvania Workers' Compensation Manual of Rules, Classifications and Rating Values for Workers' Compensation and for Employers Liability Insurance (Basic Manual) presently classifies payroll developed in the operation of a medical marijuana dispensary to Code 928, Retail Store, N.O.C. Payroll developed in the operation of a marijuana growing facility is classified to Code 0011, Flower Raising. This memorandum proposes that medical marijuana dispensaries be reclassified from Code 928 to Code 927, Pharmacy, for policies with effective dates on or after April 1, 2020.

BACKGROUND

The Pennsylvania Medical Marijuana Act (2016 Act 16, P.L. 84, No. 16) was signed into law by Pennsylvania Governor Tom Wolf on April 17, 2016 and established Pennsylvania's medical marijuana program. The program is administered by the Pennsylvania Department of Health (DOH). To participate in the program, a patient must first register on the DOH's PA Medical Marijuana Program website. The patient must then see an approved practitioner¹ who certifies that the patient has a qualifying medical condition as established by the DOH and may benefit from medical marijuana treatment. Upon the DOH's confirmation of the patient's certification, the patient may purchase their medical marijuana identification card from the DOH. The patient is then authorized to visit one of Pennsylvania's medical marijuana dispensaries to purchase the medical marijuana. Pennsylvania's first medical marijuana dispensary opened on February 15, 2018.

The PCRB's classification staff began receiving telephone calls questioning the classification assignment of medical marijuana dispensaries and growing facilities as early as January of 2017. Soon thereafter, pursuant to internal consultations and review, staff was advised to inform constituents questioning the classification assignment of such businesses that Code 928 would apply to payroll developed in the operation of dispensaries and that Code 0011 would apply to payroll developed in the operation of growing facilities. Since this is a nascent industry, there was no statistical data for the PCRB to analyze or evaluate that would aid in the initial or ultimate determination of the applicable classification. The recommendation at that time for use of Code 928 for dispensaries was based partially on the operational and regulatory information regarding such businesses provided on the DOH's website and other sources, and secondly because Code 928 is designated "N.O.C." or "Not Otherwise Classified" which has a broader

¹ Approved practitioners are physicians who have been certified by the DOH to participate in the program upon completion of a four hour training program.

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scope contemplating a variety of mercantile and related operations where the typical customer is the general public. Staff began advising constituents that these classification recommendations would likely be subject to further PCRB review, if warranted, as additional information and data regarding these business operations emerged.

Staff's initial evaluation did include consideration of whether Code 927 could be applied to medical marijuana dispensaries. At that time, it was reasoned that because medical marijuana dispensaries were not licensed in the same manner as 'traditional' pharmacies and also did not sell any other type of drug or medication, that Code 927 was not sufficiently analogous or appropriate. Staff also observed that Code 927 is a highly focused classification, applying only to pharmacies. Staff was unaware of any instances where the PCRB classified a non-pharmacy employer to Code 927 by analogy.

Code 0011 was selected for the growing of marijuana because cannabis is a genus of flowering plant.

Staff noted that the Workers' Compensation Insurance Rating Board of California (WCIRB) classifies medical marijuana dispensaries to WCIRB Code 8017 (1), Stores – Retail, which is equivalent to PCRB Code 928 except that WCIRB Code 8017 (1) also includes operations classified in Pennsylvania to PCRB Code 927. Staff also noted that the WCIRB classifies medical marijuana raising to WCIRB Code 0035, Florists, California's equivalent to PCRB Code 0011. As a result of staff's initial review and discussions, the PCRB proposed the creation of Underwriting Guide entries for "Medical Marijuana Dispensaries" (Code 928) and "Medical Marijuana Growing" (Code 0011) as part of the PCRB's April 1, 2019 Housekeeping Revisions Filing, which was approved by the Pennsylvania Insurance Commissioner (Commissioner).

REQUEST FOR REVIEW

Pursuant to continuing internal PCRB staff discussions regarding the assignment of Code 928 to medical marijuana dispensaries, staff began reviewing the PCRB files for such employers at the end of 2019. While those reviews were ongoing, the PCRB received correspondence from the Pennsylvania Department of Labor and Industry (L & I) (dated February 3, 2020) concerning the classification of medical marijuana dispensaries. The L & I correspondence was prompted by an inquiry submitted to L & I by a medical marijuana dispensary operator who "...stated that the WC classification code for his dispensary was unilaterally changed from pharmacy to retail..." The PCRB interpreted this as meaning the employer's medical marijuana dispensary was reclassified from Code 927 to Code 928. The L & I correspondence further states that "...It was also verified that the employer experienced a 60% increase in WC costs because of this classification change, with no accidents/claims." Staff has clarified that an employer's classification assignment is based upon an employer's field of business. An employer's claims experience, whether favorable or unfavorable, has no bearing on how the employer is to be classified.

L & I's February 3, 2020 correspondence did not name the employer in question. Staff has identified medical marijuana dispensaries on the PCRB's database, and is aware of a medical marijuana dispensary that was reviewed by the classification staff where the employer requested that their dispensary be reclassified from Code 928 to Code 927. Staff disapproved that request on the basis of existing classification procedure.

A summary of relevant points raised by L & I in their February 3, 2020 correspondence in support of the assignment of Code 927 to medical marijuana dispensaries follows:

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- Potential dispensary operators are subject to a “...very rigid application process...” in order to obtain a dispensary permit from the DOH.
- Dispensary stakeholders (e.g., principals, operators, financial backers and employees) are subject to a verification process, including a criminal history.
- Dispensaries must limit the amount of product sold to an individual patient to a 30 day supply of individual doses.
- Dispensaries may only sell product to individuals that have obtained a medical marijuana identification card per the process described above.
- A dispensary by statute must maintain a directory of patients approved to use medical marijuana in a database.
- Dispensaries are required to have a pharmacist or other medical professional (e.g., a physician) on premises during operating hours.
- Dispensaries may not be located within 1,000 feet of the property line of a public, private or parochial school or a day care center.

Upon consideration of the details provided in L & I's February 3, 2020 correspondence, staff determined it would be appropriate and worthwhile to perform an onsite field survey of a Pennsylvania dispensary. While the information provided on the DOH's website and in L & I's February 3, 2020 correspondence provided a fairly comprehensive description of Pennsylvania's medical marijuana program, it was felt that a physical survey would further enhance staff's understanding of the business operations. Staff was put in contact with a dispensary operator willing to participate in a survey. However, it was recently determined, that DOH regulations mandate that only individuals who have been approved with a medical marijuana identification card may enter a dispensary, thus PCRB staff was unable to proceed with the onsite survey.

Instead, PCRB staff subsequently participated in a conference call with representatives from L & I, the DOH and other constituents on March 10, 2020. L & I convened this conference call in an effort to obtain a better understanding of the reasoning behind PCRB's initial recommendation of Code 928 for medical marijuana dispensaries, and to also answer any remaining questions that PCRB staff may have regarding the operational characteristics of these businesses. A DOH representative provided a detailed overview of Pennsylvania's medical marijuana program, specifically regarding the dispensary operations. In response to PCRB staff's questions, the DOH representative advised that the DOH considers medical marijuana dispensaries to be dispensing pharmacies. It was explained that all product sold through a medical marijuana dispensary is received by the dispensary in its final form and packaging. It was indicated that a dispensing pharmacy sells medications but does not perform compounding (i.e., the creation of a pharmaceutical preparation by a licensed pharmacist to meet the unique needs of an individual patient). A compounding pharmacy performs compounding on site. The use of the term “pharmacy” was a key aspect in this discussion. Note, however, that the PCRB does not distinguish between dispensing and compounding pharmacies for classification purposes.

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The DOH representative also expanded upon the role of the dispensary's on-site pharmacist (or other medical professional) at staff's request. The pharmacist will perform an extensive patient evaluation review for all first time customers. This includes but is not necessarily limited to: asking the patient about their symptoms, what medications they are currently taking, and what manner of relief they are seeking. The pharmacist may then make recommendations to the patient on which product to buy and advise them on how that product may interact with medications they are already taking. The pharmacist has access to the patient's medical records during this process.

PROPOSED RECOMMENDATION

With the benefit of the additional details and clarification provided by the DOH, staff has reconsidered the classification assignment of medical marijuana dispensaries. Staff recognizes that many of the operational characteristics of these businesses – particularly the degree of DOH regulation and oversight along with the presence and duties of on-site pharmacists (or other medical professionals) - are not typical to employers classified to Code 928. DOH's view of these businesses as dispensing pharmacies is also compelling. Accordingly, staff concludes that these businesses are reasonably analogous to "traditional" pharmacies and therefore should be appropriately classified to Code 927. Staff proposes that medical marijuana dispensaries be reclassified from Code 928 to Code 927 for policies with effective dates on or after April 1, 2020.

As of this writing, staff has identified eight medical marijuana dispensary employer files on the PCRB's database. Of those eight files, two of the dispensaries are presently classified to Code 927 and six are presently classified to Code 928. The reclassification of those dispensaries presently classified to Code 928, moving from Code 928 to Code 927, will result in a rating value decrease of 52.1% on the basis of the approved April 1, 2020 PCRB loss costs (\$0.57 for Code 927 and \$1.19 for Code 928). While this is in excess of the approved April 1, 2020 maximum permissible rating value decrease (35%), staff recommends proceeding with this proposal in light of the preceding information. Staff notes that Code 927 is designated 'all employees, including office' and as such does not permit a division of payroll with either standard exception classification (i.e., Code 953, Office, and Code 951, Salesperson – Outside).

The PCRB is not proposing any revision to the current procedure of classifying medical marijuana growing facilities to Code 0011.

The proposed enabling Section 2 Manual language amendments are attached for the Committee's review. The PCRB will notify those employers identified on the PCRB's database as operating medical marijuana dispensaries when this filing is made. In the event of the Pennsylvania Insurance Commissioners' approval of the filing, the carrier of record for each employer that will be reclassified from Code 928 to Code 927 as a result of this proposal will be notified and a copy of that notice will be provided to the employer.

c: William V. Taylor
Bonnie Piacentino
Delisa Fairley
Joe Lombo
Christina Yost

**PENNSYLVANIA WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND
RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY
INSURANCE**

Proposed Effective April 1, 2020

INFORMATION PAGE *remains unchanged.*

PREFACE *remains unchanged.*

SECTION 1 *remains unchanged.*

SECTION 2

CLASSIFICATIONS

927 PHARMACY – ALL EMPLOYEES INCLUDING OFFICE

UNDERWRITING GUIDE

Mail Order Pharmacy

[Medical Marijuana Dispensary](#)

Pharmacy - Retail Or Internet Or Mail Order

ACTION: Revision to add verbiage for Medical Marijuana Dispensaries to code 927

RATIONALE: The operations contemplated by an employer operating a Medical Marijuana Dispensary are more closely aligned with the operations of a Pharmacy.

928 RETAIL STORE, N.O.C.

UNDERWRITING GUIDE

Antique Store, Other Than Furniture - Retail

Army/Navy Store - Retail

Art Gallery

Arts And Crafts Store - Retail

Barber Or Beauty Parlor Supply House – That Operates In A Retail Manner

Bookstore

Camera Or Photographic Supply Store - Retail

Candy Store

Clothing Store (Used) - Retail

Computer Store - Retail

Cosmetics Store

Dog Groomer - No Kennel Facilities

Dry Cleaning - Self-Service Only

Film Exchange

Fireworks Store - Retail

Garden Center - Retail

Garden Supplies Store - Retail

Golf Course - Pro Shop - Operated By Specialist Contractor

Goodwill Stores

Greeting Card Shop

Gun Shop - Retail

Habitat For Humanity ReStores

Handbag (Women's) Store

Hobby Shop - Retail

Ice Cream, Store Or Street Vending - Retail

Kitchenware (e.g., Utensils, Cutlery and Dinnerware) Store – Retail

Laundry - Coin-Operated - Self-Service

Laundry Collector Without Laundry (Excluding Contract Hauler)

Luggage Store – Retail

Mailing And Shipping Store – By Independent Contractor

Medical Marijuana Dispensary

Medical Supply Store - Retail
Motion Pictures, Development Of Films, No Other Operations
Musical Instrument Rental - Except Pianos And Organs
News Agent Or Magazine Distributor - Retail
Office Machine Store - Retail
Office Supply Store - Retail
Orthopedic, Prosthetic, And Surgical Appliances And Supply Store - Retail
Pawn Shop
Personal Computer Store - Retail
Pet Grooming - By Specialist Contractor
Pet Shop - Retail
Record Dealer, Vinyl- Retail
Photographer
Photographic Equipment And Supplies Store - Retail
Photographic Studio, Not Producing Motion Pictures, And Outside Work
Pro Shop - Golf Course - Operated By Specialist Contractor
Receiving Station - Dry Cleaner - No Dry Cleaning At Same Or Contiguous Location
Retail Store, N.O.C.
Sporting Goods Store - Retail
Stationery Store - Retail
Store, Retail, N.O.C.
Telephone (Including Cell or Mobile) Store – Retail
Thrift Store (Used Clothing, Furniture, Household Items) - Retail
Tobacco Products Store - Retail
Trophy Store (Including Assembly And Nameplate Inscribing)
Used Clothing Store - Retail
Video Tape Or DVD Store - Rental Or Sale
Vitamin Store - Retail
Wallpaper Store - Retail
Water Ice Store
Wine Store - Retail - Operated By A Winery
Women's Handbag Store

ACTION:

Revision to remove verbiage for Medical Marijuana Dispensaries from code 928

RATIONALE:

The operations contemplated by an employer operating a Medical Marijuana Dispensary are more closely aligned with the operations of a Pharmacy.

SECTION 3 *remains unchanged.*

SECTION 4 *remains unchanged.*

SECTION 5 *remains unchanged.*

SECTION 6 *remains unchanged.*

**PENNSYLVANIA WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND
RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY
INSURANCE**

Proposed Effective April 1, 2020

INFORMATION PAGE *remains unchanged.*

PREFACE *remains unchanged.*

SECTION 1 *remains unchanged.*

SECTION 2

RATING VALUES *through DEFINITIONS* *remains unchanged.*

CLASSIFICATIONS

927 PHARMACY – ALL EMPLOYEES INCLUDING OFFICE

UNDERWRITING GUIDE

Mail Order Pharmacy
Medical Marijuana Dispensary
Pharmacy - Retail Or Internet Or Mail Order

ACTION: Revision to add verbiage for Medical Marijuana Dispensaries to code 927

RATIONALE: The operations contemplated by an employer operating a Medical Marijuana Dispensary are more closely aligned with the operations of a Pharmacy.

928 RETAIL STORE, N.O.C.

UNDERWRITING GUIDE

Antique Store, Other Than Furniture - Retail
Army/Navy Store - Retail
Art Gallery
Arts And Crafts Store - Retail
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Bookstore
Camera Or Photographic Supply Store - Retail
Candy Store
Clothing Store (Used) - Retail
Computer Store - Retail
Cosmetics Store
Dog Groomer - No Kennel Facilities
Dry Cleaning - Self-Service Only
Film Exchange
Fireworks Store - Retail
Garden Center - Retail
Garden Supplies Store - Retail
Golf Course - Pro Shop - Operated By Specialist Contractor
Goodwill Stores
Greeting Card Shop
Gun Shop - Retail
Habitat For Humanity ReStores
Handbag (Women's) Store
Hobby Shop - Retail
Ice Cream, Store Or Street Vending - Retail
Kitchenware (e.g., Utensils, Cutlery and Dinnerware) Store – Retail
Laundry - Coin-Operated - Self-Service
Laundry Collector Without Laundry (Excluding Contract Hauler)

Luggage Store – Retail
Mailing And Shipping Store – By Independent Contractor
Medical Supply Store - Retail
Motion Pictures, Development Of Films, No Other Operations
Musical Instrument Rental - Except Pianos And Organs
News Agent Or Magazine Distributor - Retail
Office Machine Store - Retail
Office Supply Store - Retail
Orthopedic, Prosthetic, And Surgical Appliances And Supply Store - Retail
Pawn Shop
Personal Computer Store - Retail
Pet Grooming - By Specialist Contractor
Pet Shop - Retail
Record Dealer, Vinyl- Retail
Photographer
Photographic Equipment And Supplies Store - Retail
Photographic Studio, Not Producing Motion Pictures, And Outside Work
Pro Shop - Golf Course - Operated By Specialist Contractor
Receiving Station - Dry Cleaner - No Dry Cleaning At Same Or Contiguous Location
Retail Store, N.O.C.
Sporting Goods Store - Retail
Stationery Store - Retail
Store, Retail, N.O.C.
Telephone (Including Cell or Mobile) Store – Retail
Thrift Store (Used Clothing, Furniture, Household Items) - Retail
Tobacco Products Store - Retail
Trophy Store (Including Assembly And Nameplate Inscribing)
Used Clothing Store - Retail
Video Tape Or DVD Store - Rental Or Sale
Vitamin Store - Retail
Wallpaper Store - Retail
Water Ice Store
Wine Store - Retail - Operated By A Winery
Women's Handbag Store

ACTION: Revision to remove verbiage for Medical Marijuana Dispensaries from code 928
RATIONALE: The operations contemplated by an employer operating a Medical Marijuana Dispensary are more closely aligned with the operations of a Pharmacy.

SECTION 3 *remains unchanged.*

SECTION 4 *remains unchanged.*

SECTION 5 *remains unchanged.*

SECTION 6 *remains unchanged.*

Mausoleums And Monuments In Cemeteries, Erection Only.....	608
Mayonnaise Mfg.....	104
Meals On Wheels	898
Measuring Or Dispensing Pump Mfg.....	461
Measuring Tape Mfg. - Cloth - Sewing Type	163
Meat Chopper Mfg.	445
Meat Dealer - Wholesale - Including Meat Processing	910
Meat Dealer - Wholesale - No Processing Whatsoever	924
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Medicine Mfg.....	555
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Mercury Switch Mfg.	473
Messengers	951
Metal Anodizing	449
Metal Arches Mfg., For Buildings	413
Metal Can Mfg., Seamed	454
Metal Can Mfg., Seamless	403
Metal Ceiling Installation	676
Metal Fence (e.g., Aluminum, Chain Link or Wrought Iron) Erection-Commercial or Residential	651
Metal Furniture Mfg.	456

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