

2015 FRA Rail Program Delivery



CEQ NEPA Update

October 2015

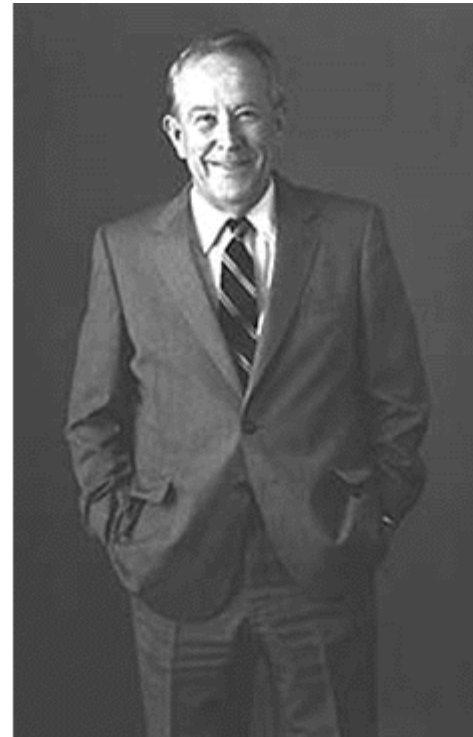
Horst G. Greczmiel

Associate Director for NEPA Oversight

Council on Environmental Quality

Senator Henry M. Jackson

“As a nation, we have failed to design and implement a national environmental policy which would enable us to weigh alternatives, and to anticipate the undesirable side effects which often result from our ongoing policies, programs and actions.” April 16, 1969



Emergency Actions and NEPA

Memorandum issued May 12, 2010

- Emergencies and the National Environmental Policy Act

[https://ceq.doe.gov/ceq_regulations/Emergencies and NEPA
Memorandum 12May2010.pdf](https://ceq.doe.gov/ceq_regulations/Emergencies_and_NEPA_Memorandum_12May2010.pdf)

Categorical Exclusion (CE) Guidance

Substantiating a New Categorical Exclusion:

- Previously Implemented Actions
- Impact Demonstration Projects
- Information from Professional Staff, Expert Opinion, and Scientific Analyses
- Benchmarking Other Agency, Public and Private Entities' Experiences

https://ceq.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf

Mitigation & Monitoring Guidance

Mitigation Commitments: Though NEPA does not create any substantive duty to mitigate adverse environmental effects, agencies may make commitments to:

- Address components of a proposed action.
- Reach environmentally preferable alternatives in EA/EIS.
- Support Finding of No Significant Impact (FONSI.)

https://ceq.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf

Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act (Efficiencies Guidance)

https://ceq.doe.gov/current_developments/docs/Improving_NEPA_Efficiencies_06Mar2012.pdf

Efficiencies

1. Making NEPA documents concise and straightforward.
2. Integrating NEPA into early project planning efforts.
3. Conducting early and well-defined scoping.
4. Improving inter-governmental coordination with state, local and tribal environmental reviews.
5. Coordinating NEPA with reviews and documents prepared under other applicable laws.
6. Adopting other agencies' NEPA documents.
7. Use of incorporation by reference.
8. Expediting responses to comments.
9. Establishing clear timelines for NEPA Reviews.

Early Integration

- Integrated into overall project planning and management to the fullest extent possible.
- Prepared in time to inform both the public and the decision maker.
- NOT after-the-fact process to justify decisions already made.
- Develop a pre-application process for applicants.

Scoping

- Determine the issues that the EA or EIS will address and identify the significant impacts related to the proposed action.
- Identify significant environmental issues and deemphasize insignificant issues.
- Solicit cooperation early.
- Identify conflicts over use of resources.
- Identify potential mitigations.
- Identify opportunities to coordinate reviews and related surveys and studies required by other laws.
- Invite affected agencies (Federal, State, and local), Indian tribal representatives, the proponent, and other interested persons.
- Plan collaboration, assign responsibilities, and develop a schedule.

Inter-governmental Collaboration

- Are there relevant State, tribal, and local environmental reviews?
- Collaborate with State, tribal, and local governments to the fullest extent possible to reduce duplication.
- Integrate environmental impact analysis and documentation requirements.
- Address consistency with approved State or local plans and laws.

OMB CEQ Memorandum: Environmental Collaboration and Conflict Resolution

[https://ceq.doe.gov/ceq_regulations/OMB CEQ Env Collab Conflict Resolution 20120907.pdf](https://ceq.doe.gov/ceq_regulations/OMB_CEQ_Env_Collab_Conflict_Resolution_20120907.pdf)

“The challenge of implementing Federal policies and programs can often be met with collaborative, constructive, and timely approaches to identify and address affected interests, consider alternatives, and reach solutions before different positions or opinions result in conflict.”

Effective Use of Programmatic NEPA Reviews

Efficiency

- This guidance provides an overview of opportunities for departments and Federal agencies to use programmatic analyses to provide for greater efficiency in their work to comply with NEPA requirements.
- The guidance reflects the need to integrate environmental reviews into the decision making process, coordinate multi-agency or multi-governmental reviews and approvals, and ensure meaningful public engagement in the decision making process.

Transparency

- Programmatic NEPA reviews should result in clearer and more transparent decision making.
- The guidance is designed to help agencies inform and meet public expectations for programmatic reviews that will enhance the utility of public review and comment.

https://ceq.doe.gov/current_developments/docs/Effective_Use_of_Programmatic_NEPA_Reviews_Final_Dec2014_searchable.pdf

NEPA Pilots Initiative

<http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project>

- CEQ selected five (5) nominated proposals for further study and implementation as part of CEQ's NEPA Pilot Program.
- CEQ tracked implementation of the five selected pilot projects, evaluated their outcomes, and prepared a final report to the Federal agencies with recommendations to implement the lessons learned and best practices identified.

The program was designed to select and publicize examples where Federal agencies:

- Simplify NEPA implementation practices.
- Reduce the time and cost involved in preparing NEPA reviews.
- Utilize information technology to improve the efficiency of NEPA implementation.
- Improve the quality and transparency of agency decision making.

IT Pilot

- The first pilot identified two web-based tools developed by the National Park Service and the U.S. Forest Service, respectively, that significantly shorten the amount of time needed to effectively analyze public comments on NEPA documents.
- CEQ has also displayed the use of these tools to manage the environmental review process, and through the NEPA IT Work Group, it is exploring the feasibility of making these tools available to all Federal agencies.

GIS Databases

- The second pilot project, is the EPA's NEPAAssist, a GIS database of environmental data.
- Initially used by many Federal NEPA reviewers, the site provides location-based data (e.g., superfund sites; economically disadvantaged communities; areas exceeding National Ambient Air Quality Standards).
- The pilot increased available datasets and made the site publicly available. Additional datasets are being validated and added.

Best Practice Principle Environment Assessment (BPPs)

- The third pilot was designed to gather lessons- learned from over a thousand NEPA practitioners that have significant experience preparing Environmental Assessments to develop best practice principles to facilitate more efficient and cost-effective NEPA environmental reviews.

Best Practice Principles for Environmental Assessments

The Priority One BPPs for EAs are:

- Description of Purpose and Need
- Description of Proposed Action and Range of Alternatives
- Contents
- Cumulative Effects Assessment and Management
- Regulatory Consultation and Coordination
- Determination of Environmental Impact Significance
- Extent of Public Involvement

Northeast Corridor

- The fourth pilot engaged Federal, State and local governments and the public in the environmental review process for intercity passenger rail service in the Northeast Corridor (NEC) early in the planning process.
- The goal was to collaboratively set benchmarks that maintain rigorous environmental protections and save time and costs by avoiding conflicts and delays in the later steps of rail-project development.
- The Tier 1 EIS addresses the broad social, economic, financial, and environmental effects of alternatives for the entire Northeast Corridor along the route of the proposed service.
- The subsequent Tier 2 NEPA reviews will lead directly to decisions related to specific construction projects along the NEC.

Forest Land Restoration

- The fifth NEPA Pilot, “Approaches to Restoration Management,” evaluated and compared the effectiveness of U.S. Forest Service environmental reviews for two forest restoration projects
 - A large, landscape scale project [the 4 Forest Restoration Initiative] and
 - A small watershed focused project [5-Mile Bell]
- The pilot included webinars to display best practices that can be applied to environmental reviews for future restoration projects.

NEPA and NHPA
A Handbook for Integrating NEPA
and Section 106

March 2013

http://www.whitehouse.gov/sites/default/files/nepa_and_nhpa_handbook.pdf

NEPA and CEQA:
Integrating Federal and State
Environmental Reviews
(NEPA-CEQA Handbook)

http://www.whitehouse.gov/sites/default/files/page/files/nepa_ceqa_handbook_feb2014.pdf

Actions to Modernize Infrastructure Permitting

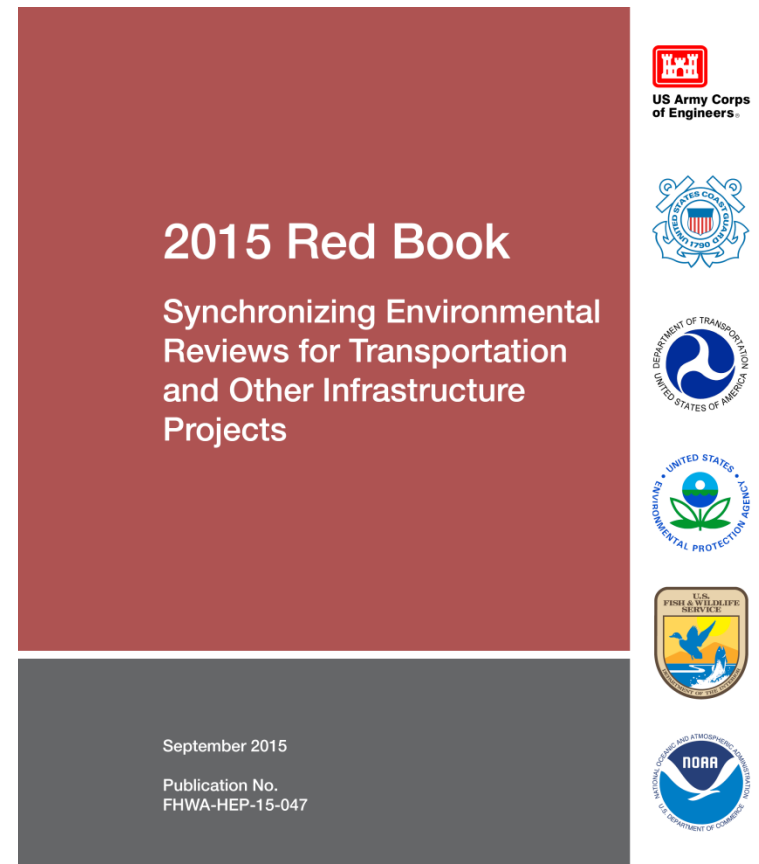
- Key Benefits of **Dashboard Expansion** and **Red Book**:
 - **Improve interagency coordination** through development of coordinated project schedules and synchronized reviews, with the proven potential to cut timelines by months and sometimes years while still protecting communities and the environment.
 - **Increase transparency** for project applicants so they can plan more efficiently.
 - **Better explain** review processes to Congress and other stakeholders, including clarifying the many sources of delay outside Federal control.
 - Report on the **improved outcomes** for communities and the environment to bolster support for reviews.

Dashboard Guidance

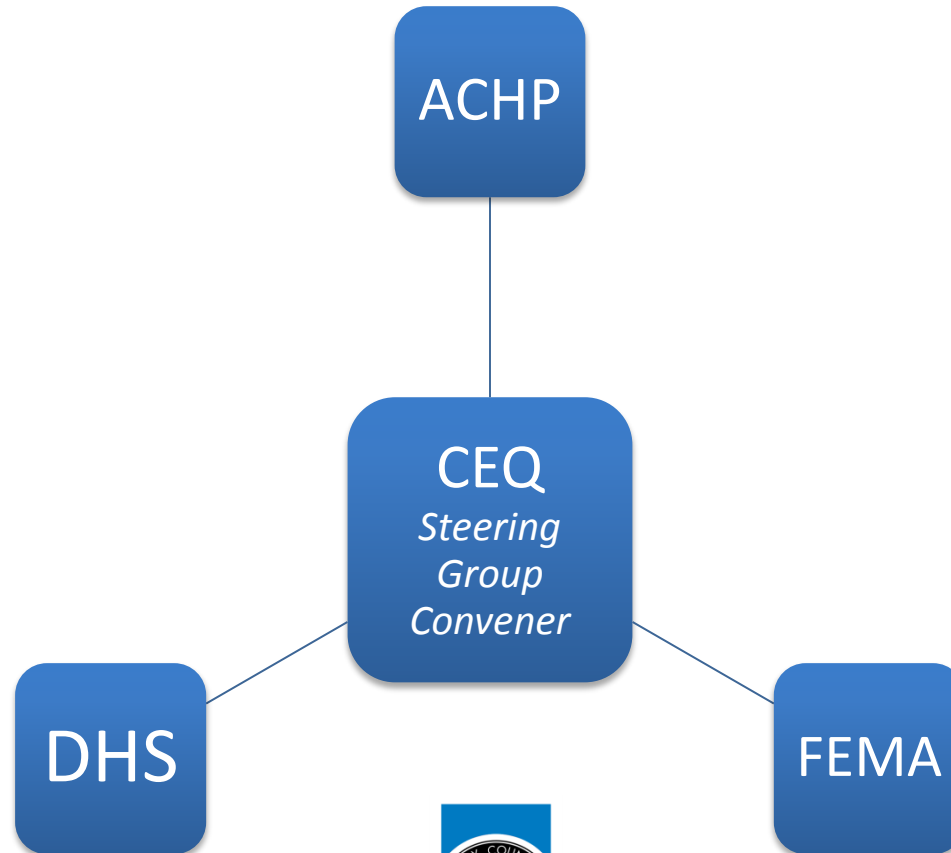
- The Dashboard is intended to facilitate enhanced interagency coordination and provide transparency for a set of projects that might experience lengthy Federal permitting and review given their size, complexity, and significance.
- There is a public-facing side of the Dashboard, where users can obtain project information, and an agency-only facing side for entering in project schedule, milestones and other details.
- Any project must be posted if it meets the criteria in one or more of the following categories: **complex projects, Environmental Impact Statement or by agency discretion.**
- The guidance takes effect for any new project which begins on or after October 12.
- Within 30 days of the guidance's release, agencies must **designate and identify to OMB a Senior Accountable Official** for the purposes of overseeing implementation.

The Updated Red Book

- The original Red Book focused was published in September 1988.
- This update provides a “how-to” for field staff of Federal agencies that review permit applications, and Federal, State, and local agencies that fund or develop major infrastructure projects, on synchronizing NEPA and other regulatory reviews.
- Developed by a Synchronization Workgroup that was formed in 2013, and met regularly since January 2014



Unified Review Steering Group



Unified Federal Review

Sandy Recovery Improvement Act:

- Amended the Stafford Act
- Calls for a Unified Federal Environmental and Historic Preservation Review for **Disaster Recovery** Projects
- Unified Review Process to be completed by **July 29, 2014**

UFR Developments

- One stop shop: <https://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters>
- Resources for Environmental and Historic Preservation Practitioners: https://s3-us-gov-west-1.amazonaws.com/dam-production/uploads/1416583387915-086d4eec37a6f3abf4321a09a3101c80/Practitioner%20Guidance_101014_Updated%20Hyperlinks.pdf
- Resources for federal assistance applicants seeking information to support environmental and historic preservation reviews: http://www.fema.gov/media-library-data/1440713845421-9bdb5c0c8fe19ab86d97059ccb26e3b4/UFR_Applicant_Guide_Final_508.pdf

States and Local Jurisdictions with NEPA-like Environmental Planning Requirements

The Council on Environmental Quality (CEQ), in collaboration with States and local jurisdictions that have environmental review processes, is preparing memoranda which compare and contrast State and local environmental review requirements with NEPA requirements. The memoranda also provide contacts for each jurisdiction.

https://ceq.doe.gov/state_information/states.html

Revised Draft Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews

- **NEPA.GOV**

- <https://ceq.doe.gov>

- “Current Developments”

- “CEQ Releases Revised Draft Guidance on Greenhouse Gases and Climate Change”

- **WHITEHOUSE.GOV**

- www.whitehouse.gov/administration/eop/ceq

- “Initiatives”

- “Steps to Modernize and Reinvigorate NEPA”

- » “Revised Draft Guidance for GHG Emissions”

COMMENT PERIOD CLOSED 25 MARCH 2015

When – How to Approach the Analysis

- **Proportionality**
 - Rely on agency experience and expertise to determine whether an analysis of GHG emissions and climate change impacts would be useful to the decision maker and the public.
 - Apply the “rule of reason” to ensure that the type and level of analysis is commensurate with the anticipated environmental effects of GHG emissions and climate change, and that these effects are deserving of study.
- **Scoping**
 - Use the traditional scoping process to ascertain whether consideration of GHG emissions and climate change impacts is relevant to the proposed action and the extent of analysis required.
- **Agency Decision Tools**
 - Develop agency practices and guidance based on proportionality and the rule of reason that frame the process by which the appropriate type, level, and extent of analysis of GHG emissions and climate change impacts are determined.
 - Provide the rationale for analyzing/not analyzing GHG emissions and climate change impacts in NEPA documentation.

How

- **Quantitative vs. Qualitative**- Consider rules of reason, reference point, availability of tools, and input data when deciding whether a quantitative analysis would be useful for distinguishing between alternatives and mitigation measures.

- **Availability of Tools**

- In determining whether a *quantitative* or *qualitative* analysis is warranted, quantify when tools and appropriate input data are available.

- Many reliable [GHG accounting tools and methods](#) exist today and are widely available.

- **GHG Emissions as a Proxy**

- Use the projected quantity of GHG emissions and, when appropriate, the potential changes in carbon sequestration and storage, as a proxy for assessing the climate change impacts of a proposed action.

- **Reference Point**- The reference point is not a substitute for a determination of significance under NEPA. Significance is determined by considering the context and intensity factors set forth in 40 C.F.R. § 1508.27.

- Quantitative analysis of GHG emissions is warranted if $\geq 25,000$ mt CO₂-e on an annual basis are expected or quantification is easily accomplished.

- Qualitatively analyze GHG emissions if quantitative analysis is not used and explain why.

Effects

- **Direct – Indirect**

- Assess effects caused by the proposed action that occur at the same time and place (“direct”) in addition to those that occur later in time but are reasonably foreseeable (“indirect”).
- Choose reasonable temporal and spatial parameters for the analysis of potential effects that would best inform the decision-making process and the public.
- Consider emissions from activities that have a reasonably close causal relationship to the proposed action, such as those that may occur as a predicate for the proposed action (“upstream”) and those that may occur as a consequence of the proposed action (“downstream”).

Affected Environment

Effects of Climate Change – IPCC, USGCRP interagency efforts

- Scientific research has shown that a rise in global atmospheric GHG emission concentrations is significantly affecting the Earth's climate.
- Anticipated effects of climate change include more frequent and intense heat waves, more severe wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea-level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems.
- Describe the current and expected future state of the affected environment based on available climate change information, including observations, interpretive assessments, predictive modeling, scenarios, and other empirical evidence, in NEPA documents.

Sustainability

- Design alternatives that account for potential climate change effects on a proposed action over the course of its anticipated useful life, especially if it will be located in an area that is considered vulnerable to specific effects such as sea-level rise.
- Examine the impacts of climate change on a proposed action that could affect sensitive populations or environmental resources.

Effects

- **Context: local, regional, international**
 - Avoid relying upon boilerplate text or merely comparing the estimated quantity of emissions from a proposed action to calculated quantities of global emissions *unless* such a comparison truly would assist the public and the decision maker.
 - In addition to employing the rule of reason and conducting analyses that are proportional to anticipated impacts, incorporate agency emissions targets, such as applicable Federal, State, tribal, or local goals for GHG emission reductions, to provide an analytical frame of reference, and discuss whether the expected emissions are consistent with such goals.
- **Short Term – Long Term**
 - Consider both the short- and long-term effects and benefits of the proposed action based on the expected life of the project and the duration of the generation of emissions.
 - Such consideration is appropriate both in the analysis of alternatives and mitigation measures.

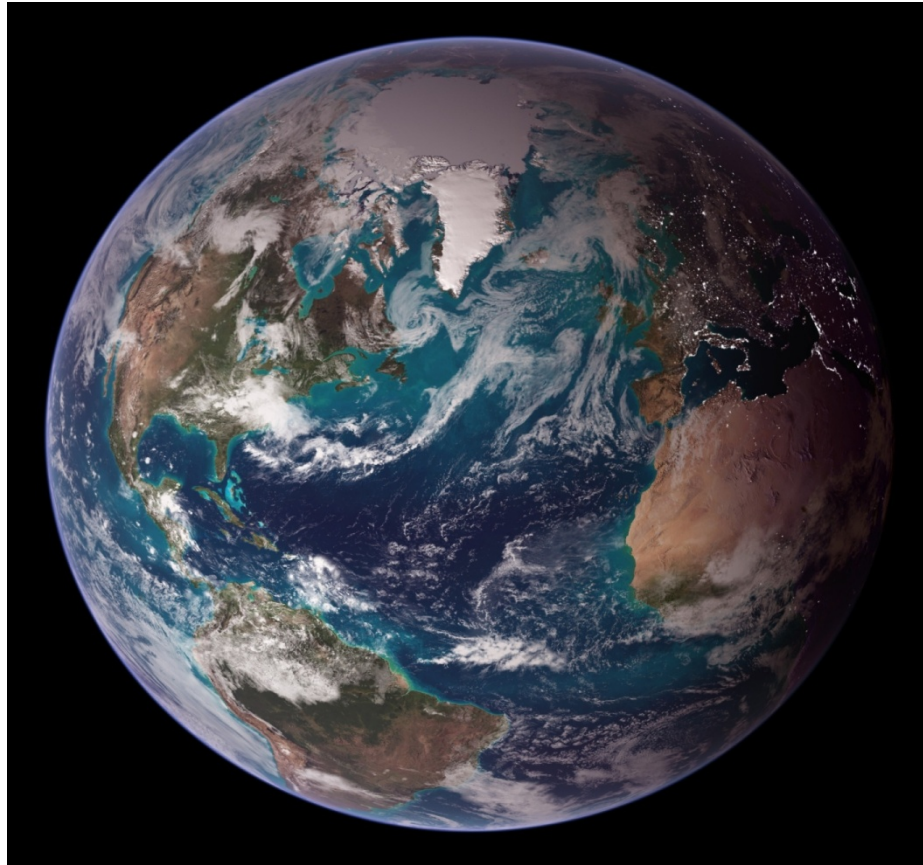
Adaptation/Preparedness

- **Opportunity with Early Planning**
 - Analyze potential GHG emissions and climate change effects early in the NEPA process to maximize opportunities to adjust alternatives and mitigations which will ultimately lead to more resilient proposed actions.
- **Sustainability – Broader GHG Goals**
 - Programmatic or landscape level NEPA reviews that support agency decisions affecting broad scales should provide an aggregate analysis of GHG emissions or climate change effects when trends in changing environmental conditions can be determined.
 - Agencies should also discuss broader sustainability and GHG goals such as promoting energy efficiency, avoiding or reducing GHG emissions, reducing the use of petroleum products, and using or developing renewable energy.
 - Tiered documents can incorporate analyses in programmatic NEPA documents by reference and demonstrate how a particular proposed action affects the broader sustainability and GHG goals articulated in the programmatic document.

Comment Themes

- **Scope of authority under NEPA**
 - Consideration of upstream and downstream emissions
 - Role of a causal connection and agency control
- **Consistent approach for all Federal actions**
 - Concern about including land and resource management actions
 - Interest in preserving agency discretion
- **Reference point**
 - Whether to include a reference point for quantitative analysis
 - If included, whether a higher/lower reference point is appropriate
 - If included, whether to account for direct or direct & indirect emissions
- **Social cost of carbon (SCC)**
 - Role in NEPA reviews
- **Mitigation provisions**
 - Concern they are substantive, contrary to NEPA's procedural nature
- **Overall effect on NEPA reviews**

Questions?



Thank You

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