

BEFORE THE  
TEXAS RACING COMMISSION  
AUSTIN, TEXAS

COMMISSION MEETING  
FEBRUARY 16, 2017

BE IT REMEMBERED that the above entitled matter came on for hearing on the 16th day of February, 2017, beginning at 10:30 A.M. at 2105 Kramer Lane, Austin, Travis County, Texas, and the following proceedings were reported by SHERRI SANTMAN FISHER, Certified Shorthand Reporter for the State of Texas.

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APPEARANCES

Commissioners: JOHN T. STEEN, III  
RONALD F. EDERER  
GLORIA HICKS  
GARY P. ABER  
NADINE PHILLPOTTS  
A. CYNTHIA LEON

1 CHAIRMAN STEEN: All right. Good  
2 morning. The time is now 10:30. At this time I'd like  
3 to call today's meeting of the Texas Racing Commission  
4 to order.

5 Mary, could you please call the roll?

6 MS. WELCH: Commissioner Gary Aber?

7 COMMISSIONER ABER: Here.

8 MS. WELCH: Commissioner Gloria Hicks?

9 COMMISSIONER HICKS: Here.

10 MS. WELCH: Commissioner Cynthia Leon?

11 MS. LEON: Here.

12 MS. WELCH: Commissioner Margaret

13 Martin? Commissioner Nadine Phillpotts?

14 MS. PHILLPOTTS: Here.

15 MS. WELCH: Commissioner Robert Schmidt?

16 Vice-Chairman Ron Ederer?

17 VICE-CHAIRMAN EDERER: Here.

18 MS. WELCH: Chairman John Steen?

19 CHAIRMAN STEEN: Here.

20 Do we have a quorum?

21 MS. WELCH: Yes, sir, we do.

22 CHAIRMAN STEEN: Thank you.

23 I first want to say that I'm honored and  
24 grateful for the opportunity to be appointed presiding  
25 officer of the Commission. I've enjoyed working with

1 everyone, all the industry and staff and the  
2 Commissioners over the past few years, and I look  
3 forward to continuing that work. I also want to thank  
4 Rolando Pablos for his service and wish him luck in his  
5 new position as Secretary of State.

6 Item II, public comment. Devon, has  
7 anyone signed up?

8 MS. BIJANSKY: No, sir.

9 CHAIRMAN STEEN: Item III, general  
10 business. The first item under general business is a  
11 report by Commissioner Hicks.

12 Commissioner Hicks, good morning.

13 COMMISSIONER HICKS: Good morning.

14 CHAIRMAN STEEN: I understand you went to  
15 the Valley Race Park to see the live meet.

16 COMMISSIONER HICKS: I did.

17 CHAIRMAN STEEN: What can you tell us?

18 COMMISSIONER HICKS: I did.

19 I asked to have a few minutes because I  
20 think we need something happy in the racing industry.  
21 And I did drive down to Harlingen to the Valley  
22 racetrack and was there for the Sunday matinee. And  
23 when I drove in, it was real clean and real neat.  
24 There were about 300 people there that day and they  
25 were all real excited. They were winter Texans and

1 local people.

2 I went inside and I was there for the  
3 weigh-in of the dogs and the vet check. And there are  
4 500 dogs there. And I know that's a lot and you don't  
5 think about that many being at a race, but there were.  
6 It was a wonderful experience.

7 I went to the kennels, to John Dalton's  
8 and several kennels. They were so clean and the dogs  
9 were so happy. I went into the turnout areas.  
10 Everything was just great. And I -- I was so  
11 impressed. The track surface was good. I enjoyed it,  
12 being the greyhound person, because I guess most people  
13 wouldn't go out and walk on the track, but it was -- it  
14 was really great.

15 The people were happy. One gentleman  
16 told me he made 57,000 net the week before. So this --  
17 this really has worked. And the greyhound industry  
18 came together with this plan. And I know Sally has got  
19 the next meet in November. And it's working for the  
20 people and they're all happy about it. And the dogs,  
21 I'm telling you they're just wonderful. They're very  
22 well cared for.

23 There were eight races that day and that  
24 means that, you know, the dogs were out on the track  
25 and the people were real excited and happy. They

1 wanted it to continue. They said "If there's any way  
2 you can get them to just keep this up until we go  
3 home," because there were people from Pittsburgh and  
4 from Nebraska, from all over. And they were having  
5 such a good time.

6           And so it's really working and I think  
7 the whole plan worked. And I'm so proud of the  
8 greyhound industry, that they came together with this  
9 plan and that they're racing in Texas, it has not died,  
10 which I think we all thought when Gulf closed. So it's  
11 really doing well. The dogs are doing well at the  
12 farm.

13           One thing that was interesting, this was  
14 a maiden race for these dogs. And they came there.  
15 They had only raced at the farms. So when they  
16 started, they had never been at a track. And when I  
17 saw them, they were athletes. I mean, those dogs knew  
18 the drill. They knew what to do. They were so happy.

19           And so it was really quite interesting.  
20 So if you ever get a chance to go when Sally opens,  
21 please do. It's an amazing thing and it's a good thing  
22 for the industry.

23           That's it.

24           CHAIRMAN STEEN: Thank you, Ms. Hicks.

25           The next item is Agenda Item III-B-1,

1 budget and finance update.

2           Adrienne Courtney, would you give us the  
3 update?

4           MS. COURTNEY: Good morning,  
5 Commissioners. I'm Adrienne Courtney, chief financial  
6 officer.

7           On pages five through 10 of your agenda  
8 packet is the agency's fiscal year 2017 operating  
9 budget reflecting revenue collection and expenditures  
10 through December 31st.

11           With 33 percent of the year completed,  
12 the agency has collected approximately two million, or  
13 44.3 percent, of projected revenue and has expended 2.4  
14 million, or 28.6 percent, of our budgeted  
15 expenditures.

16           I'd also like to give you an update of  
17 the agency's '18-'19 legislative appropriations  
18 request. The LAR, with all of the requested  
19 exceptional items approved by the Commission at the  
20 August Commission meeting, was recommended by the  
21 Legislative Budget Board and is included in both the  
22 introduced Senate and House bills.

23           There's one difference between the House  
24 and the Senate bill. The Senate bill increased the  
25 Texas-bred appropriations to the '16-'17 base level of

1 3.4 million. The House version maintains the  
2 Texas-bred appropriation at 3.3 million which was  
3 submitted in the LAR and recommended by the LBB.

4 I'd be happy to answer any questions you  
5 may have.

6 CHAIRMAN STEEN: Commissioners, any  
7 questions?

8 VICE-CHAIRMAN EDERER: Was there a budget  
9 meeting yesterday -- Tuesday?

10 MS. COURTNEY: It was Tuesday.

11 VICE-CHAIRMAN EDERER: Tuesday.

12 MS. COURTNEY: The Senate Finance  
13 Committee, yes.

14 VICE-CHAIRMAN EDERER: And that all went  
15 well.

16 MS. COURTNEY: It went very well, yes.

17 CHAIRMAN STEEN: Anybody else?

18 Thank you.

19 The next item is Agenda Item III-B-2,  
20 report on wagering statistics.

21 Curley Trahan?

22 MR. TRAHAN: Good morning, Mr. Chairman,  
23 Commissioners.

24 On pages 11 through 13 of your meeting  
25 materials is the comparison report on the wagering

1 statistics for the period of January 1 through January  
2 29 for calendar years 2016 and 2017.

3 For the reporting period, total wagering  
4 activities at both the horse racetracks and the  
5 greyhound racetracks showed an increase over 2016 of  
6 1.87 percent and 6.54 percent, respectively. Overall  
7 total wagers placed in Texas decreased by 0.61 percent,  
8 while total wagers placed on Texas races increased by  
9 7.81 percent.

10 I'd be happy to answer any questions you  
11 may have.

12 CHAIRMAN STEEN: Any questions?

13 Thank you.

14 MR. TRAHAN: Thank you.

15 CHAIRMAN STEEN: The next item is Agenda  
16 Item III-B-3, inspection and enforcement reports.

17 Jim Blodgett?

18 MR. BLODGETT: Mr. Chairman,  
19 Commissioners, good morning.

20 Commissioners, your racetrack inspection  
21 report is provided for your review on page 14 of your  
22 materials. This report lists two minor pending  
23 inspections issued at Sam Houston Race Park. They're  
24 awaiting follow-up inspection by staff.

25 These issues involved a handicapped

1 restroom repair and a mutuel programming issue. I've  
2 been assured by the Sam Houston management that they  
3 both have been resolved and are just awaiting  
4 reinspection.

5                   Commissioners, Lone Star Park recently  
6 concluded its Quarter Horse meet and Retama Park  
7 concluded its Thoroughbred meet. The ruling activities  
8 for those meets are listed on pages 15 and 16 of your  
9 materials. In most respects, the number and types of  
10 rulings were typical. However, the reports do reflect  
11 one serious issue that I'd like to bring to your  
12 attention.

13                   You'll see on the report that there were  
14 five methamphetamine rulings for racehorses at Lone  
15 Star Park and one at Retama Park. These are serious  
16 Class 1 violations that call for penalties on the  
17 trainer of up to a year's suspension and a  
18 10,000-dollar fine and the loss of purse. And that's  
19 if these were first-time violations. For subsequent  
20 second and additional violations of this nature, they  
21 have a far greater penalty. With trainers, they can be  
22 penalized up to a five-year suspension and \$25,000 and  
23 loss of purse.

24                   You first became aware of these positives  
25 during our August Commission meeting when we reported a

1 number of drug human positives for methamphetamine and  
2 Commissioner Aber asked if they were also appearing in  
3 horses. At that time, because these were still being  
4 adjudicated and hadn't reached a final step in our  
5 process with the hearings, I was unable to provide much  
6 information, but I am -- now that the cases are final,  
7 I can give you a complete report.

8           The methamphetamine positives began  
9 appearing for the first time during the Lone Star Park  
10 Thoroughbred meet which runs from April to July. What  
11 was different about these positives is they were  
12 appearing in urine only and at extraordinarily low  
13 levels that were just above the limit of detection.  
14 The positives were also coming from trainers who had  
15 long histories of no or very limited and minor drug  
16 positives.

17           Staff undertook a very rigorous  
18 investigation in an attempt to determine the source of  
19 the methamphetamine drug at that point. We interviewed  
20 the trainers and grooms to see if they knew where the  
21 drugs were potentially coming from. We searched the  
22 affected barns and handlers' vehicles, race animals.  
23 We conducted drug testing on all grooms who had handled  
24 the horses and also tested the gate crew.

25           We tested staff barn -- the test barn

1 staff to ensure that we didn't have someone  
2 contaminating the samples from that end. And we even  
3 went to the extent of testing the shipping containers  
4 that would go to the lab to ensure that we didn't have  
5 a problem with contaminated shipping containers. We  
6 collected test samples from the feed from the affected  
7 barns.

8           We consulted with DPS to see if they had  
9 any insights or recommendations at that point in time.  
10 We consulted with other jurisdictions and found that  
11 several had the same problem. In fact, the RMTC,  
12 because of what the industry was considering a  
13 cross-contamination issue with regards to  
14 methamphetamine, they recently prepared an educational  
15 brochure aimed at assisting horsemen to eliminate or at  
16 least minimize contamination. And we've placed a copy  
17 of that brochure on each -- in each one of your  
18 materials that were provided.

19           In the end, we were unable to draw a firm  
20 conclusion as to the source of the drug. We did have a  
21 couple of grooms test positive for methamphetamine. We  
22 also had one member of the gate crew at Lone Star Park  
23 that resigned rather than take a drug test for us. So  
24 it was possible that these positives were the result of  
25 human contamination, but there was absolutely no way of

1 determining for sure that that was the source of the  
2 drug.

3 As a result, the executive director  
4 issued an amendment to the penalty guidelines that  
5 provide the stewards with the discretion to reduce or  
6 eliminate the fine and suspension whenever a positive  
7 test could be the result of incidental human  
8 contamination rather than intentional administration.

9 The factors that the stewards considered  
10 to exercise that option were whether the prohibited  
11 substance is one that was commonly used by humans,  
12 illegal or otherwise, whether the prohibited substance  
13 was found at very low levels in the urine and testing  
14 did not reveal presence in the blood or plasma.  
15 However, in such cases, the stewards disqualified the  
16 horses and adjusted the order of finish since it may  
17 have been perceived as a competition advantage from a  
18 small amount of drug.

19 The change to this penalty guideline is  
20 intended to only be a temporary measure. It is our  
21 goal to eliminate all sources of environmental  
22 contamination and to require trainers to take steps to  
23 prevent such contamination.

24 Towards that end, staff has taken the  
25 following steps: We have implemented a random drug

1 testing program to test trainers, assistant trainers,  
2 stable foremen, and grooms. We've increased our  
3 presence in the back -- in the stable areas at peak  
4 times. We're working closely with racetrack security  
5 to improve control over a restricted area, including  
6 tighter security at the gates and additional barn and  
7 vehicle inspections. We've initiated a 1-800 tip line  
8 to collect anonymous reports of rule violations. We  
9 are distributing the brochure that I mentioned earlier  
10 to the horsemen.

11           Commissioners, we have submitted rule  
12 proposals which you'll consider today to increase the  
13 penalty for first-time human drug positives to a  
14 six-month suspension from a 30-day suspension and  
15 provided for license revocation after a second  
16 offense. The material that you'll hear today will  
17 require trainers to maintain an accurate list of their  
18 employees with the licensing office, require the  
19 racetracks to maintain a log of persons entering the  
20 backside areas at off hours or after hours.

21           Once these improvements are in place, my  
22 understanding is that the executive director intends to  
23 put a normal policy back in place, including stiff  
24 fines and suspensions for any level -- Class 1 level  
25 drug.

1           That concludes my report and I'll try to  
2 answer any questions.

3           CHAIRMAN STEEN: Any questions?

4           COMMISSIONER ABER: That's very good.  
5 And that's the main thing if we're going to improve on  
6 it. And I think that's -- you all have done that and  
7 so I think that's fantastic.

8           VICE-CHAIRMAN EDERER: The rule  
9 proposals, you've, of course, reviewed all of them and  
10 you're very familiar with what the rule proposal  
11 changes.

12           MR. BLODGETT: Yes, sir.

13           VICE-CHAIRMAN EDERER: Are they going to  
14 be sufficient to assist you in your enforcement?

15           MR. BLODGETT: I believe it's a good  
16 start, Commissioner. One --

17           VICE-CHAIRMAN EDERER: A good start.  
18 What do you mean a good start? Should there be more?

19           MR. BLODGETT: Well, I think this is  
20 going to be an ongoing battle; and I think the more  
21 tools we can put in our tool belt, the better off we're  
22 going to be to try to put a stop to this type of  
23 activity at the track.

24           A pet peeve of mine, if you'll indulge  
25 that, was always that the suspension for a human drug

1 positive of this nature required for the -- currently  
2 requires a 30-day suspension, counseling, and the groom  
3 or whoever it was goes right back to work. The  
4 trainer, however, he can be suspended for up to a year  
5 and be fined substantially, plus loss of purse. It  
6 just didn't seem like that was making a lot of  
7 difference to some of the problem people that were  
8 using. So I think that this rule that's before you  
9 could very well make an impact on that level.

10 VICE-CHAIRMAN EDERER: So you support the  
11 rule proposals.

12 MR. BLODGETT: Yes, sir.

13 CHAIRMAN STEEN: Any other questions?

14 Thank you, Jim.

15 Okay. Moving on to Agenda Items IV-A-1  
16 through 8, rule proposals, I'd like to recognize Mark  
17 Fenner.

18 Mark, can you lay these out?

19 MR. FENNER: Yes, sir.

20 Commissioners, the change to the first  
21 proposal, which is 309.154, Stable or Kennel Area, is  
22 based on an RCI model rule that would require racetrack  
23 security to maintain a written log of all individuals  
24 who are accessing the backside between midnight and  
25 5:00 a.m. and also to provide a copy of that written

1 log to the investigator.

2 Staff requested this change in order to  
3 better track and control access to the restricted areas  
4 of the stable and kennel area.

5 There are two changes proposed to  
6 311.104, the trainers rule. The first would require  
7 trainers to maintain a list of current employees with  
8 the licensing office and to notify the licensing office  
9 of any changes when they either initiate or learn of a  
10 change in their employees.

11 We requested this in order to be able to  
12 conduct random drug testing of employees of the  
13 trainers and everybody who's connected with a  
14 particular horse.

15 The second change to this rule would  
16 require trainers whose licenses have been suspended,  
17 revoked, or denied to notify the owners of the change  
18 in their license. This is also consistent with an RCI  
19 model rule and it's to ensure that the owners are  
20 promptly notified whenever a trainer is unable to  
21 continue training their horses.

22 The change to 311.105, the jockey rule,  
23 that's based on an RCI model rule and it would require  
24 that people weigh no more than 130 pounds in order to  
25 get a jockey's license. Now, this is because jockeys

1 weighing over 130 pounds are not eligible to ride, so  
2 we want to ensure that people who are not actually  
3 eligible to race don't get access to the backside and  
4 also aren't named as riders on horses, because they're  
5 not eligible to ride.

6           The changes to 311.302, 304, and 308 all  
7 relate to human drug testing. And what this would do  
8 is this would increase the suspension for a first-time  
9 human drug positive or for a test refusal from the  
10 current level of a 30-day suspension to a six-month  
11 suspension. It also provides for the license to be  
12 revoked if they have a second positive or if they  
13 refuse a second test. Finally, the changes do make a  
14 technical correction relating to how the test specimens  
15 are documented.

16           The change to 313.501 relates to training  
17 facility licenses which currently expire on December 31  
18 of each calendar year. Now, this is inconsistent with  
19 the way we treat other types of occupational licenses.  
20 And because, you know, it's providing for licenses to  
21 expire at the end of the calendar year, it provides a  
22 financial disincentive for training facilities to  
23 come -- the later in the year, the less likely they are  
24 to try and get a license.

25           So what we're going to do is make this

1 change so that they expire at the end of the month one  
2 year after the license is issued. And this is  
3 consistent with how we treat other occupational  
4 licenses and making this change will remove any  
5 financial disincentive related to the expiration date.

6 Finally, the change to Rule 315.1 would  
7 address greyhound racing officials and particularly  
8 racetrack superintendents. Currently the horse rules  
9 provide that racetrack superintendents are racing  
10 officials, but it doesn't do that for greyhound  
11 racetracks. This proposal would make those rules  
12 consistent. It would add the greyhound track  
13 superintendent as a race official. And this will help  
14 us to ensure that the track is maintained by qualified  
15 association staff.

16 Now, each of these proposals were  
17 discussed at the rules committee's meeting on January  
18 31. No attendee expressed opposition to any of these  
19 proposals. After discussion, the committee authorized  
20 us to bring this to the full Commission for discussion  
21 and consideration. And staff recommends publishing the  
22 proposals for public comment.

23 CHAIRMAN STEEN: Commissioners, any  
24 questions? Rules committee members, anything to add?

25 VICE-CHAIRMAN EDERER: Just I agree with

1 what Mark has just said. It was fully discussed.  
2 Public comment was available. There was some public  
3 comment. But the industry definitely supports the rule  
4 proposals and we recommend that they be published in  
5 the Texas Register.

6 CHAIRMAN STEEN: Devon, has anyone signed  
7 up to speak on this?

8 MS. BIJANSKY: No, sir.

9 CHAIRMAN STEEN: Okay. Then I'll  
10 entertain a motion to publish Agenda Item IV-A-1  
11 through 8 in the Texas Register for public comment.

12 COMMISSIONER HICKS: I'll make the  
13 motion.

14 CHAIRMAN STEEN: A motion by Commissioner  
15 Hicks.

16 MS. LEON: I'll second it.

17 CHAIRMAN STEEN: Second, Commissioner  
18 Leon.

19 Any discussion?

20 Okay. For a vote, all in favor please  
21 signify by saying aye.

22 COMMISSIONERS: Aye.

23 CHAIRMAN STEEN: Any opposed?

24 The motion carries.

25 All right. Moving to Agenda Items IV-B-1

1 through 9, rule adoptions, Mark, would you lay these  
2 out, please?

3 MR. FENNER: Yes, sir.

4 Each of the following proposals were  
5 published for public comment in the December 9th  
6 edition of the Texas Register. The Commission did not  
7 receive any comments in response.

8 The changes to Rule 301.1, Definitions,  
9 and to 311.104, Trainers, would adopt first a  
10 definition of a paper/program trainer just based on the  
11 RCI model rules. It also amends 311.104 to make the  
12 practice of working as a program trainer and also of an  
13 owner naming a program trainer on an entry form as  
14 being inconsistent with maintaining the honesty and  
15 integrity of racing and as a detrimental practice.

16 Now, this will allow the Commission to  
17 exclude these licensees who violate the rules from the  
18 racetracks and also allow the stewards to fine and  
19 suspend or even revoke the licenses of program trainers  
20 and of the participating owners.

21 The change in Subsection (b) of 307.62,  
22 which is the disciplinary action rule, would specify  
23 the methods by which the agency must provide notice of  
24 stewards' and judges' hearings. The proposed methods  
25 are by hand delivery, by both certified and regular

1 mail, and by electronic mail if the receipt can be  
2 verified. The change also clarifies that nonappearance  
3 by a licensee to whom the notice has been given under  
4 this section is a waiver of the right to a hearing.

5 The next change is the addition of new  
6 Subsection (j), Discovery, to 307.62, which would  
7 formalize the procedures by which the parties would  
8 exchange information prior to a disciplinary hearing.

9 The change to 321.2, Odds Manipulation,  
10 would correct an incorrect citation within the rule  
11 that's to another rule.

12 The change to 321.11, Access to Magnetic  
13 Media, updates outmoded references to magnetic media  
14 and changes it to a more current, quote, "removable  
15 electronic media".

16 Finally, the changes to 321.35, 41, and  
17 42 deal with the oversight of outstanding tickets and  
18 vouchers that was required when the outs were a source  
19 of agency revenue. Now that the associations retain  
20 this revenue, these strict oversight tools are no  
21 longer needed, so the changes delete those provisions,  
22 but they still retain the authority for the executive  
23 director to protect the patrons if there's a dispute  
24 over whether a claim should be paid or not.

25 These were discussed at the rules

1 committee meeting and the staff recommends adoption.

2 MS. LEON: No comment was received?

3 MR. FENNER: No opposition.

4 MS. LEON: No opposition from any  
5 source?

6 MR. FENNER: That's correct.

7 VICE-CHAIRMAN EDERER: Everything went  
8 just fine. And I would like to thank and recognize  
9 the -- Commissioner Aber is always at the rules  
10 meetings and contributes considerably, as does the  
11 Comptroller's office, and we appreciate it.

12 We recommend adoption.

13 CHAIRMAN STEEN: Devon, has anyone signed  
14 up to speak?

15 MS. BIJANSKY: No, sir.

16 CHAIRMAN STEEN: I'll entertain a motion  
17 to adopt the proposals in Agenda Items IV-B-1 through 9  
18 as published in the Texas Register.

19 VICE-CHAIRMAN EDERER: So move.

20 CHAIRMAN STEEN: A motion by Vice-Chair  
21 Ederer.

22 COMMISSIONER HICKS: Second.

23 CHAIRMAN STEEN: Seconded by Commissioner  
24 Hicks.

25 Any discussion?

1                   Okay. Let's take it up for a vote. All  
2 in favor please signify by saying aye.

3                   COMMISSIONERS: Aye.

4                   CHAIRMAN STEEN: Any opposed?

5                   The motion carries.

6                   There is no executive session today.

7                   Our next meeting is scheduled for April  
8 11, subject to change as necessary to accommodate the  
9 Legislature.

10                  The time is now 10:56. With all business  
11 concluded, we are now adjourned. Thank you.

12                  (Proceedings concluded at 10:56 a.m.)

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1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

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4 I, SHERRI SANTMAN FISHER, a Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above-captioned matter came on for  
7 hearing before the TEXAS RACING COMMISSION as  
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said  
10 hearing were reported by me, accurately reduced to  
11 typewriting under my supervision and control and, after  
12 being so reduced, were filed with the TEXAS RACING  
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,  
15 Texas, this \_\_\_\_\_ day of February, 2017.

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20   
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