

§ 1212.82 Suspension or termination.

The Secretary shall suspend or terminate the operation of this part or subpart or any provision thereof, if the Secretary finds that this part or subpart or the provision obstructs or does not tend to effectuate the declared policy of the Act.

§ 1212.83 Proceedings after termination.

(a) If this subpart terminates, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, will become trustees of any funds and property the Board possesses or controls at that time and any existing claims it has, including, without limitation, claims for any unpaid or undelivered funds or property.

(b) The trustees will:

(1) Serve until discharged by the Secretary;

(2) Carry out the Board's obligations under any contracts or agreements entered into pursuant to the Order;

(3) Account from time to time for all receipts and disbursements and deliver all property on hand, together with all the Board's and trustees' books and records to any person the Secretary directs; and

(4) Execute at the Secretary's direction any assignments or other instruments necessary or appropriate to vest in any person full title and right to all of the funds, property, and claims owned by the Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order will be subject to the same obligations imposed upon Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more honey industry organizations in the interest of continuing honey promotion, research, and information programs.

§ 1212.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, terminating or amending this subpart or any regulation issued under it will not:

(a) Affect or waive any right, duty, obligation, or liability that arose or may arise in connection with any provision of this part;

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States or any person with respect to any violation.

§ 1212.85 Personal liability.

No member, alternate member, or employee of the Board may be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as a member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

§ 1212.86 Separability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability of it to other persons or circumstances will not be affected.

§ 1212.87 Amendments.

Amendments to this Order may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Department.

§ 1212.88 OMB control number.

The control number assigned to the information collection requirements in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505-0001, OMB control number 0581-0217, and OMB control number 0581-[NEW, to be assigned by OMB].

Subpart B—[Reserved]

Dated: May 29, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1212**

[Docket No. AMS-FV-06-0176; FV-03-704-PR-1B]

RIN 0581-AC37

Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order) is favored by first handlers and importers of honey or honey products. The Order will be implemented if it is approved by a majority of the eligible first handlers and importers voting in the referendum, who also represent a majority of the volume of honey and honey products handled and imported during the representative period. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996.

DATES: Comments must be received by August 3, 2007. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by August 3, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments can be made on the Internet at <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; Fax (202) 205-2800. Comments should reference the docket number, title of action, date, and page number of this issue of the **Federal Register** and will be made available for public inspection at the above address during regular business hours.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Sonia Jimenez, Chief, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; telephone 202-720-9915 or (888) 720-9917 (toll free) or e-mail sonia.jimenez@usda.gov.

SUPPLEMENTARY INFORMATION:

A referendum will be conducted among eligible first handlers and importers of honey or honey products to determine whether they favor issuance of the proposed Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order) [7 CFR part 1212]. The program will be implemented if it is approved by a majority of the first handlers and importers voting in the referendum, who also represent a majority of the volume of honey and honey products handled and imported during the representative period. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411-7425]. It would cover domestic first handlers and importers of honey and honey products of 250,000 pounds or more. A proposed Order is being published separately in this issue of the **Federal Register**.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a

ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The National Honey Packers and Dealers Association (Association) has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of the first handlers and importers voting who also represent a majority of the volume voting in the referendum. The Department proposes that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which first handlers and importers of honey or honey products may vote on whether they want a honey promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the

referendum report, and confidentiality of information.

There are approximately 45 first handlers and 30 importers of honey and honey products who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of \$750,000 or less annually and small agricultural service firms as those having annual receipts of \$6.5 million or less. First handlers and importers would be considered agricultural service firms. Using these criteria, most first handlers would be considered small businesses while most importers would not.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled 155 million pounds in 2006. The top ten producing States in 2006 included North Dakota, South Dakota, California, Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York. To avoid disclosing data for individual operations, NASS statistics do not include Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, and South Carolina. NASS reported the value of honey sold in 2006 was \$161,314,000. Honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005.

There is a current Honey Research, Promotion, and Consumer Information Program in effect. Based on the assessment reports in connection with the current honey program, four countries account for 72 percent of the honey and honey products imported into the United States. These countries and their share of the imports are: China (28%); Argentina (21%); Vietnam (13%); and Canada (10%). Other countries combined totaled 28 percent of honey and honey products imported to the United States. In 2006, 155 million pounds of honey were produced in the United States, 279.4 million pounds were imported and 7.6 million pounds were exported.

This proposed rule provides the procedures under which first handlers and importers of honey or honey products may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 45 first handlers and 30 importers who will be eligible to vote in the first referendum. First handlers and importers of less than

250,000 pounds of honey and honey products annually will be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 45 first handlers and for an estimated 30 importers would be \$45.00 for all first handlers or \$1.00 per first handler and \$30.00 for all importers or \$1.00 per importer.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

OMB Number: 0581—NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Order. The ballot is needed for the referendum that will be held to determine whether first handlers and importers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible first handlers and importers voting in a referendum, who also represent a majority of the volume of honey and honey products approve of this program.

Referendum Ballot

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 3.75 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581—NEW.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581—NEW and the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order, and should be sent to USDA in care of Sonia Jimenez at the address above and the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th

Street, NW., Room 725, Washington, DC 20503.

All comments received will be available for public inspection during regular business hours at the same address. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of the public record.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The estimated annual cost of providing the information by an estimated 45 first handlers would be \$45.00 or \$1.00 per first handler and for an estimated 30 importers would be \$30.00 or \$1.00 per importer.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection.

Background

The Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported honey and honey products. The Association submitted an entire proposed Order on March 17, 2006, and modifications were made to the proposal to make it consistent with the Act. The proposal is being published for public comment in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for honey and honey products in the United States. The program would be funded by an assessment levied on first handlers and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at an initial rate of 1 cent per pound. First handlers and importers of less than 250,000 pounds of honey and honey products per year would be exempt from paying assessments.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the Honey Packers and Importers Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible first handlers and importers of honey or honey products to determine

whether they favor implementation of the Order. That section also requires the Order to be approved by a majority of the first handlers and importers voting, who also represent a majority of the volume of honey and honey products handled an imported during the representative period.

This proposed rule establishes the procedures under which first handlers and importers of honey or honey products may vote on whether they want the honey packer and importer promotion, research, and information program to be implemented. There are approximately 75 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the honey industry.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer education, Honey and honey products, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

1. The authority citation for part 1212, as proposed elsewhere in this issue of the **Federal Register**, continues to read as follows:

Authority: 7 U.S.C. 7401 and 7411–7425.

2. Part 1212, as proposed elsewhere in this issue of the **Federal Register**, is proposed to be amended by adding subpart B to read as follows:

Subpart B—Referendum Procedures

Sec.

| | |
|----------|---------------------------|
| 1212.100 | General. |
| 1212.101 | Definitions. |
| 1212.102 | Voting. |
| 1212.103 | Instructions. |
| 1212.104 | Subagents. |
| 1212.105 | Ballots. |
| 1212.106 | Referendum report. |
| 1212.107 | Confidential information. |

1212.108 OMB control number.

Subpart B—Referendum Procedures

§ 1212.100 General.

Referenda to determine whether eligible first handlers and importers of honey and honey products favor the issuance, continuance, amendment, suspension, or termination of the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order shall be conducted in accordance with this subpart.

§ 1212.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to re-delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible first handler* means any person (excluding a common or contract carrier) who handled 250,000 or more pounds of domestic honey and honey products during the representative period, who first buys or takes possession of honey or honey products from a producer for marketing. If a producer markets the honey directly to consumers, the producer shall be considered the first handler with respect to the honey produced by the producer.

(d) *Eligible importer* means any person who imports 250,000 or more pounds of honey and honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0409.00.00 and 2106.90.9988, during the representative period. Importation occurs when honey or honey products originating outside of the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign produced honey or honey products immediately upon release by the U.S. Customs Service, as well as any persons who acts on behalf of others, as agents or brokers, to secure the release

of honey or honey products from the U.S. Customs Service when such honey or honey products are entered or withdrawn for consumption in the United States.

(e) *Handle* means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

(f) *Honey* means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

(g) *Honey products* mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient, if the product contains at least 50 percent honey by weight.

(h) *Order* means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

(i) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

(j) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(k) *Representative period* means the period designated by the Department.

(l) *United States* or *U.S.* means collectively the 50 states, the District of

Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1212.102 Voting.

(a) Each eligible first handler and eligible importer of honey or honey products shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1212.103 Instructions.

(a) *Referenda.* The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Department, have been engaged in the handling or importation of honey or honey products and are subject to assessments under this Order and excluding those exempt from assessment under Order.

(b) The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the

procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(3) Give reasonable public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(4) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

§ 1212.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence or such appointment, shall be performed by the agent.

§ 1212.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1212.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1212.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1212.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0505-0001, OMB control number 0581-0217, and OMB control number 0581-[NEW, to be assigned by OMB].

Dated: May 29, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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