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Minnesota Farm Labor Regulations

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Farming is an increasingly complex activity. Not only do farmers need to keep abreast of and apply a wide range of technical knowledge, but they also must make sophisticated farm management decisions. Farm management, in many cases, includes hiring and supervising skilled and unskilled labor. Farmers need to understand federal and state regulations that pertain to the hired farm labor force. This issue of the *Minnesota Agricultural Economist* presents a brief summary of this expanding area of the law as it relates to Minnesota agriculture.

Hired farm labor is important to American farmers. In 1978 it represented nearly 9 percent of farm production expenditures nationally. While the number of farm workers declined 30 percent between 1967 and 1978, farm wages increased faster than any other agricultural cost except interest.

In the north-central states (including Minnesota) in 1979, all but 2 percent of the hired farm work force was white, but 15 percent of farm workers were migrants, implying heavier "in-migration" of Canadians and out-of-state workers during peak farm production activities in this region.

In Minnesota, 104,000 farms used 30,000 hired workers in 1980. This represented a reduction of 12,000 from the number employed in 1976, but the annual average farm wage rate in the state rose by 36 percent in that five-year period.

These rates are only for hourly cash farm wages. Not all farm workers are employed on an hourly basis. While a top-quality farm worker may cost from $1,200 to $1,500 per month, this would not include the value of perquisites (fringe benefits). Perquisites averaged more than 17.5 percent of cash wages in Minnesota in 1980 and included such items as board, housing, health and life insurance, social security, and unemployment and worker's compensation.

While the number of hired workers is decreasing over time, numerous federal and state regulations have been extended to cover agricultural labor. Farm employers no longer enjoy special exemption from U.S. and state labor policies designed to protect the hired worker. The following sections of this review article present a summary of nine areas of labor regulations that Minnesota farmers should understand.

WAGE AND HOUR LAWS: AGRICULTURAL EMPLOYMENT

Wage laws establish minimum hourly rates which must be paid by certain employers to some or all employees. Hour laws (overtime laws) require that certain employers pay their employees time and one-half or double time for work over a set number of hours per week. In agriculture, minimum wage laws have widespread application, but hour laws have almost no application.

Federal Law

Federal wage and hour laws are found in the Fair Labor Standards Act. Less than half of the hired farm worker force is covered by the federal minimum wage because of the threshold "500 worker-days" test and specific exemptions. A farm employer who used more than 500 worker-days (days when an employee works at least one hour) of agricultural labor in any calendar quarter of the preceding calendar year must pay all but specifically exempted hired farm workers the federal minimum wage in the current year. The worker-days of all employees except family members are counted, even though some employees may fall into one of the following unprotected or exempted categories:

- hand harvest laborers paid on a piece rate in a piece rate operation who came daily from their permanent residences and were employed less than 13 weeks in agriculture in the preceding year;
- hand harvest employees under age 17 when employed on the same farm as their parents if paid the same piece rate as older employees on the same farm;
- cowboys and shepherds employed on the range in production of livestock; and
- members of a nonincorporated farmer's family (neither protected nor counted in the 500 worker-days test).

Nonexempt employees on a farm that has met the 500 worker-days test must be paid the federal minimum wage regardless of age. However, a reduced minimum wage is applied to certain students who are employed under a special certificate issued by the regional wage-hour administrator. Unless special permission is granted, an employer may hire not more than six workers under the special certificate program.

Farmers who use employment services established under the Wagner-Peyser Act must agree to pay the higher of the minimum wage or prevailing rates in the area.

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Minnesota Law

Compliance with federal law does not excuse employers from compliance with state law where the latter provides wider coverage. Under the Minnesota Fair Labor Standards Act, the 1982 minimum wage for covered employees age 18 or over is $3.35 per hour and for those under age 18, $3.02. Farm employees age 18 or over are covered if employment is on a farm which uses at least the equivalent of two full-time workers and on any given day employs more than four employees. One full-time equivalent worker is 40 weeks of employment in a calendar year. Minnesota requires payment of time and one-half for work over 48 hours to farm employees, as well as to others, if they qualify for the minimum wage under Minnesota law. In addition, the time and one-half requirement applies to persons under age 18 employed in agriculture to detassel corn.

CHILD LABOR IN AGRICULTURE

While child labor in agriculture is regulated at the federal level and in Minnesota, the ages at which children may begin to work and at which they may be assigned hazardous tasks are lower than in non-farm industry generally.

Federal Law

Under the Fair Labor Standards Act, parental employers are more leniently treated and may in many instances give consent to non-parental employers to hire their children when this would otherwise be illegal. ("Parents" means legal parents or those who take a child into their home to be treated as a family member.)

Certain tasks in agriculture which are prohibited as "particularly hazardous" for youthful workers under age 16 include: operation of most self-propelled and power-driven machinery; handling of certain chemicals; tasks inside storage bins and silos; work around certain breeding animals.

"Agriculture" includes all aspects of farming, and preparation for market, delivery to market, delivery to storage, and delivery to transport carriers.

Employment of 14- and 15-year-olds in agriculture is by definition illegal, with the following exceptions:

- The parent may employ children ages 14 and 15 and need not observe limitations on "particularly hazardous" jobs or the ban on employment during school hours.
- Employment by a non-parental agricultural employer is permitted if the work is not "particularly hazardous" and not during school hours.
- Limited and supervised employment by a non-parental employer in certain otherwise forbidden tasks is allowed if the youthful worker is a "student learner" enrolled in an accredited vocational agricultural school program.
- Children ages 14 or 15 may operate certain tractors and self-propelled machinery for non-parental agricultural employers if they have completed an approved vocational agricultural training program in tractor and machinery operation or have finished the 4-H certification program.

When the employer is a parent, the same regulations apply for ages 10 through 13. However, the non-parental employer may not employ children this age during school hours, their work cannot be particularly hazardous, and their employment requires parental consent unless they are employed on the same farm as the parent. There are no exceptions for the 10-to-13 age group. Further, unless an administrative waiver is obtained, a non-parent agricultural employer who is required to meet the federal minimum wage cannot employ children ages 10 and 11 even with parental permission.

Children age nine and under may not be hired on farms that are required to pay the federal farm worker minimum wage, even with parental consent.

Violations of the child labor laws may result in criminal and/or civil penalties and private actions by the employee against the employer.

Minnesota Law

The only Minnesota child labor restrictions for 16- and 17-year-olds relate to "particularly hazardous" work, and these do not apply if the youthful worker is in an approved training program, is employed by a parent or certain statutory "family farm corporations," or is age 17 and has graduated from high school. Where the parent or an appropriate family farm corporation is the employer, only Minnesota's compulsory school attendance laws apply to ages 15 and under.

Non-parent agricultural employers may hire 14- and 15-year-olds in Minnesota if the work is not particularly hazardous and the hours do not coincide with school hours. Parental consent is not required unless the employer wants the child to work in excess of 40 hours a week or more than eight hours in 24. A 14- or 15-year-old cannot work before 7:00 a.m. or after 9:30 p.m. Parents cannot waive this requirement.

Workers ages 14 and 15 may be employed during school hours if they are working pursuant to an "employment certificate" from their school district, with parental consent. Where a non-parent is the agricultural employer, children under age 14 may be hired for corn detasseling and other agricultural operations (not specifically prohibited) with parental consent.

Employment of children under age 12 is permitted only by the parent. The restrictions on the parent are the same as those for those ages 12 to 15. Employment by non-parental agricultural employers is not permitted unless there is an exemption for the particular child by the Commissioner of Agriculture.

OCCUPATIONAL SAFETY AND HEALTH LAWS

The National Safety Council estimates that agriculture is the third most hazardous industry. Congress included agriculture in the Williams-Steiger Occupational Safety and Health Act of 1970. The Occupational Safety and Health Administration (OSHA) administers the act. Minnesota's parallel to OSHA is the Minnesota Occupational Safety and Health Act.

Though relatively few OSHA regulations are specifically aimed at agriculture, farm employers are clearly subject to the act's general duty clause requiring a safe and healthful work place for employees. OSHA regulations applicable to agricultural employment may be divided into the categories described below. Note that on a year-to-year basis Congress has exempted farmers with 10 or fewer employees and no temporary labor camp from enforcement of any standard or regulation under the act.

Employment-Related Housing

OSHA regulations dealing with temporary labor camps apply to most

facilities supplied as living or cooking quarters to farm workers. OSHA regulations cover matters including site, shelter, water supply, toilet facilities, sewage facilities, laundry and bathing set-ups, lighting, and cooking and dining facilities. Farmers using the Minnesota Bureau of Employment Services may also be required to comply with the ETA regulations governing housing.

In Minnesota, a particular housing site for farm workers may be regulated by OSHA, the Minnesota Occupational Safety and Health Commission (MOSHC), the Minnesota Health Department, ETA, the Minnesota Landlord-Tenant Law, and local building and housing regulations.

Slow-Moving Vehicles

OSHA standards require warning signs on vehicles which by design travel at less than 25 miles per hour on public roads. A slow-moving vehicle emblem is a florescent yellow-orange triangle with a dark red reflecting border.

Farm Tractor Safety Regulations

OSHA regulations require farm employers to equip most farm tractors of more than 20 horsepower with roll-over protection structures (ROPS) and seat belts. Exemptions allow removal of ROPS from "low profile" tractors when clearance is a substantial problem and when tractors must be operated with incompatible mounted equipment, such as corn pickers and vegetable pickers. OSHA and corresponding state regulations require that employees be given a specified set of operating instructions when initially assigned to the tractor and at least annually thereafter.

Farm Machinery Safety Regulations

Power take-off drives, conveying augers, straw spreaders and choppers, cotton gins, rotary beaters, and rotary tillers are just a few of the machines for which OSHA regulations require safety devices such as guards, shields, and access doors designed to protect employees from hazards associated with moving machinery parts. Such machinery must also have audible warning devices which sound if the shield or access door is not properly closed while the machine is in operation.

Other agencies active in farm safety and health regulation offer no exemption for farmers with 10 or fewer employees.

Field Worker Exposure to Pesticides

EPA regulations provide limited worker protection from pesticides by forbidding application of pesticides if unprotected workers are in the field, mandating certain warnings, and providing rules with respect to reentry by workers with respect to 12 chemicals. The Federal Insecticide, Fungicide, and Rodenticide Act makes it unlawful to use a product in a manner inconsistent with its label or contrary to EPA regulations. Farmers who ignore these regulations may be subject to civil or criminal penalties.

Regulations of Transporters of Migrant Workers

Regulations under the Interstate Commerce Act govern safety in the transportation of agricultural workers if they are traveling more than 75 miles and crossing a state boundary.

FARM LABOR CONTRACTOR REGULATIONS

Certain farmers and growers have experienced difficulty in obtaining a sufficient supply of local seasonal agricultural labor. This resulted, some time ago, in the emergence of the farm labor contractor, as an important supplier of temporary farm workers. The traditional contractor recruits at distant points, hires, and transports a crew of workers to a farm pursuant to a contract with the farmer. Often the farm labor contractor or "crew leader" supervises the work of the crew and acts as paymaster. In some instances, the contractor controls housing and other of the workers' everyday needs. The Farm Labor Contractor Registration Act, at the federal level, and a more specialized Minnesota statute provide regulation for the protection of "migrant workers" and farm employers from unscrupulous farm labor contractors.

Federal Law

FLCRA defines "farm labor contractor" as "any person, who for a fee, whether for himself or on behalf of another person, recruits, solicits, hires, furnishes or transports migrant workers (excluding members of their immediate family) for agricultural employment." Those who fall under this definition may fall within one of 10 specific exempt categories and thus be free of the requirements of the act. FLCRA defines "migrant worker" as one whose primary employment is in agriculture as defined in the Fair Labor Standards Act and who, on a seasonal or other basis, performs agricultural labor as defined in the Social Security Act. The recruiting of one worker, under certain circumstances, may cause the recruiter to be classed as a "farm labor contractor."

If one engages in recruiting or related activities with respect to "migrant workers" and none of the exemptions apply, such person must register under FLCRA and comply with its terms. Specific showings must be made before the registration will extend to authorize providing of transportation or housing.

Contractors' statutory duties include: (1) displaying registration certificate to those with whom they intend to deal; (2) informing all workers of the area of employment, the nature of the work, transportation, housing, and insurance arrangements, wage rates to be paid, and charges to be assessed for the contracting services; (3) posting the terms and conditions of employment, as well as those for occupancy, if the contractors control housing; (4) maintaining payroll records showing deductions and providing workers with itemized statements; and (5) disclosing to workers the period of employment, the existence of a labor dispute, and any commission arrangement that exists with retailers or others who may sell goods to workers. These disclosures must be made to workers in a language in which they are fluent before they travel to the job site.

Contractors who violate FLCRA may: (1) be subject to a civil penalty of not more than $1,000 for each violation, (2) lose the facilities and services available under the Wagner-Peyser Act, and (3) suffer revocation or suspension of registration. Willful violators may be subject to criminal prosecution.

If a farmer employer or the farm labor contractor discharges a "migrant worker" in retaliation for asserting rights under FLCRA, the U.S. District Court is authorized to reinstate the worker with back pay or damages.

Farmers who knowingly employ the services of an unregistered contractor may be denied DOL farm employment facilities and services for three years. They may also be subjected to a civil penalty of not more than $1,000 per violation, whether they acted knowingly or not. Migrant workers may also sue for actual or liquidated damages.

Both farm labor contractor and farm employer must keep copies of all payroll records required to be maintained under federal law.

Minnesota Law

The new Minnesota law, effective November 1, 1981, provides regulation of migrant labor but does not mention state registration of farm labor contractors. The Minnesota law applies only to processors of fruit or vegetables who directly or indirectly employ more than 30 migrant workers per day for more than seven days in a calendar year. A "migrant worker" is defined in the statute as a person "at least 17 years of age who travels more than 100 miles to Minnesota from some other state to perform seasonal agricultural labor in Minnesota."

Mainly, Minnesota law provides for the detailed requirements of an employment statement, in English and Spanish, that must be provided to migrant laborers when recruited. The statement is an enforceable contract.

Aggrieved migrant workers may bring a civil action for damages and injunctive relief. An employer's use of the federal work clearance order system does not exempt the employer from compliance with the Minnesota statute.

UNEMPLOYMENT INSURANCE

Under the federal-state unemployment insurance system, when a worker is employed in "covered employment," the employer pays unemployment taxes that fund benefits. However, unemployed claimants may be denied benefits for not having worked in "covered employment" for a sufficient length of time or failing to meet other requirements of eligibility. Further, the reason workers are unemployed may disqualify them from receiving benefits. For example, being fired for cause disqualifies a worker. Alien status may also be a basis for denial.

The federal tax of 3.4 percent is assessed against the employer on the first $6,000 of wages paid to one working in "covered employment." A credit of up to 2.7 percent of taxable payroll is allowed against the federal tax for taxes paid into the state system or excused under an approved experience rating system. The Minnesota unemployment tax is levied against employers on the first $6,000 of the employee's annual wage. Experience rating systems allow individual employers to be taxed at different rates, depending on the firm's past unemployment record.

In Minnesota, workers can draw for the lesser of 26 weeks or 70 percent of the number of credit weeks earned. Benefits may be extended when certain levels of unemployment have been reached. Benefits are substantially less than the claimant's weekly wage.

Farm Worker Coverage

"Covered employment" under federal law now includes work in agriculture where the employer has 10 or more hired workers during the current or preceding calendar year or has a cash payroll for farm labor of $20,000 or more in any calendar year quarter of the current or preceding calendar year. Nationally, about 459,600 farm employees (40%) and 17,400 farm employers (2%) are affected.

Minnesota law provides that covered employment starts when four or more agricultural employees are used for some portion of a day in each of 20 different weeks during the current or preceding calendar year or when cash wages of $20,000 or more are paid in any quarter of the current or preceding calendar year.

WORKERS' COMPENSATION

State workers' compensation laws provide for mandatory medical coverage and income protection for employees who are injured on the job. Coverage is also provided for employment-related illness and disease. State statutes require employers to carry private insurance designed to pay claims up to limits established by statute, qualify as self-insured, or, in the case of a few jurisdictions, contribute to a state fund which exists to pay claims. The cost to the employer is tied to the number of persons employed, the type of work involved, and the record of past employment-related injuries for the particular operation.

Dollar limits on loss-of-income benefits are set by statute, and the schedules vary from state to state. Worker's compensation statutes cover medical bills without limits in 44 states.

States that have no exemption for agricultural employment are Arizona, California, Colorado, Connecticut, Hawaii, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, and Ohio. States that require coverage when the agricultural employer has paid for hired labor in a set period are Alaska, Iowa, Oregon, Pennsylvania, and Vermont.

The Minnesota statute exempts several specific classes of agricultural employees: (1) persons employed by "family farms" which by statute are farm operations paying or obligated to pay less than $8,000 cash wages to farm laborers in the preceding calendar year; (2) the spouse, parent, or child of a farmer; (3) partners and the spouse, parent, or child of partners of a farm operation; (4) executive officers of statutory family farm corporations and the spouse, parent, or child of said officer employed by such corporations; (5) executive officers of certain closely held corporations and the spouse, parent, or child of said officers employed by such corporations; (6) farmers or members of farm families exchanging work with a farm employer or statutory family farm corporation in the same community; and (7) casual employees. Elective coverage is possible as to the above classes of excluded employees with the exception of (6) exchange labor.

SOCIAL SECURITY FOR HIRED FARM WORKERS

The Social Security system, identified as OASDHI, pays billions of dollars annually in survivors, disability, and health insurance benefits, in addition to retirement benefits. Coverage now extends to a substantial percentage of hired agricultural workers. More than 2.25 million farm workers had taxable wages under the OASDHI system in 1974.

Two portions of the Internal Revenue Code, the Self-Employment Contributions Act and the Federal Insurance Contributions Act (FICA), provide for the collection of taxes needed to fund the benefit schemes. Self-employment is not considered herein.

Only persons who are "employ-

ees" can have "wages" under FICA and only those workers who have "wages" will pay FICA taxes and have employer contributions credited to their accounts. Only where they have taxable wages are workers earning the quarters of coverage which determine insured status.

There are two basic categories into which an insured employee may fall: currently insured and fully insured. Where the employee is fully insured, the whole range of retirement and survivor benefits is available. Where the employee is currently insured, only certain of the survivor benefits are available: those for a widow or widower caring for a child; a surviving divorced wife caring for a child; unmarried children or dependent grandchildren under age 18; certain students and disabled dependents over 18; and the lump-sum death benefit. One who is fully insured is entitled to disability benefits if the disability is sufficient in character and duration.

A worker who is 65 or over and who is a Social Security beneficiary is automatically entitled to hospital insurance. Also, certain disabled persons and those suffering from chronic kidney disease are entitled to hospital insurance.

An aged, blind, or disabled person is eligible for supplemental security income if monthly income falls below certain levels.

For Social Security purposes, agricultural labor includes all on-farm production employment plus employment in certain enumerated peripheral activities, as well as employment in processing if the employer produced more than one-half of the commodity with respect to which the services are performed.

An agricultural worker, including a piece worker, who receives cash wages of at least $150 from a particular farm employer during a calendar year must pay FICA taxes and the employer must contribute as well. If the cash remuneration is less than $150 from a particular employer, the agricultural worker, other than a piece worker, will have "wages" if he or she works for the employer on 20 days or more during the calendar year.

Employers are required to maintain records. General guidelines are in Circular A, "Agricultural Employer's Tax Guide," Publication 51 of the Internal Revenue Service (IRS), which is revised and reissued annually. Employers who must withhold FICA taxes are required to follow depository rules which are prescribed by the regulations and summarized in Circular A.

AGRICULTURAL LABOR-MANAGEMENT LAW

Congress enacted the National Labor Relations Act in 1935 to settle the industrial unrest which had typified labor-management relations for decades. Popularly known as the Wagner Act, the NLRA was designed to prevent conflict by encouraging collective bargaining. Conciliation, mediation, and arbitration provisions were included to foster settlement of disputes. Major amendments were added in 1947 to equalize the rights granted to labor organizations and management. Some states, including Minnesota, have also enacted labor-management legislation.

Agricultural Exemption

Agriculture is exempted under both the Minnesota and federal statutes in the definition of "employee." The critical language in the NLRA reads in part: "but shall not include any individual employed as an agricultural laborer." In the Minnesota Labor Relations Act, the definition of "employee" is qualified: "but does not include any individual employed in agricultural labor."

Minnesota has not followed the example of Hawaii and Wisconsin in including agricultural labor under the general state labor relations statute, nor the example of California, Arizona, Kansas, and Idaho in enacting special statutes dealing solely with agricultural labor-management relations. Nevertheless, while unprotected by statute, farm worker unions are lawful in Minnesota and may engage in collective bargaining and, within limits, other activities, including strikes.

ALIEN FARM WORKERS LAWS

Mexico is the source of most alien farm workers. The flow of alien farm workers, both documented and illegals, from the Caribbean area is substantially less than from Mexico.

There are three basic categories of alien farm workers: (1) aliens who have legally entered under the auspices of the U.S. Employment Service; (2) commuter workers who enter legally with their "green cards"; and (3) illegal aliens who are in the country in violation of U.S. immigration laws. This latter group appears to be the largest of the three.

H-2 Workers

Aliens may enter the United States farm work force legally under the H-2 program of the U.S. Employment Service. These aliens are classed as nonimmigrants under the Immigration and Nationality Act. The statute offers this description:

> (H) an alien having a residence in a foreign country which he has no intention of abandoning . . . (ii) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country . . . .

The number of agricultural workers entering through this program has been quite small, and they have come primarily from the West Indies. For the year ending June 30, 1976, 572 H-2 workers entered from Canada, 11,568 from the West Indies, and 185 Basque sheep herders from Spain.

Under the H-2 program, agricultural employers, anticipating a labor shortage, may request certification for the use of temporary foreign labor, but the application must be filed 80 days before the anticipated need to permit a 60-day search for domestic workers. Applicants must give assurance that they will cooperate in the active recruitment of U.S. workers. By the sixtieth day of recruitment, or 20 days before the date of the specified need, the appropriate regional administrator must grant the application to the extent that there has been a determination that there will not be enough U.S. workers to fill the employers' needs.

An employer of temporary foreign labor through the H-2 program is subject to many regulations regarding wages, housing, insurance, and other matters.

Commuters

Canadians and Mexicans can attain "commuter" status and are commonly referred to as "green-carders," green being the original color of the Alien Registration Receipt Card that the worker must carry. A daily or seasonal commuter, classified as a "special immigrant" under the Immigration and Nationality Act, is one who is lawfully admitted for permanent residence and returning from a temporary visit

abroad. As of 1976, about 64,000 persons had commuter status, with most being daily commuters and less than 15 percent being seasonal commuters.

Illegal Aliens

Immigration officials estimated that in 1975 about one million jobs were held by illegals, with approximately 335,000 of them in agriculture. A 1977 report indicates that more than 64,000 illegals were in the Grain Belt states. It is not illegal for farmers to employ these workers unless state law makes it so. It is, however, a violation of the Farm Labor Contractor Registration Act for contractors to recruit such workers.

SUMMARY

Minnesota farmers may be restricted in hiring farm labor by how much they pay per hour and whether they must pay overtime rates, depending on the number of employees hired and what their ages are. They are forbidden to hire children under several circumstances, and where they may hire them, they may not permit them to perform hazardous duties.

The farmer-employer must provide a healthy and safe workplace, and, where housing of hired labor is provided, it must meet a variety of OSHA standards. Specific regulations must be adhered to in the use by farm workers of selected agricultural chemicals and vehicles. Where a farmer deals with a farm labor contractor, special regulations must be observed by both the contractor and the farmer.

Farmers may be required to participate in the unemployment insurance system and worker's compensation program. Most farmers will be required to involve themselves and their employees in the Social Security program.

Farm workers may collectively bargain with Minnesota farmers, even if they are not included in either state or federal labor relation laws. If farm workers are aliens, their legal status may impose protective federal or state regulations on the farmer-employer.

Adherence to these regulations by Minnesota farmers may be confusing and costly. Confusion results from possible difficulty in determining if certain regulations apply, and remaining vigilant as to when thresholds are reached that trigger regulatory requirements. The cost of meeting some regulatory requirements may be substantial, and must be assessed in terms of anticipated returns from various enterprise ventures.

As farms become fewer and larger, operators will increasingly face the decision of using more labor substitutes (machines, etc.) or incurring the cost and regulatory compliance requirements imposed by federal and state farm labor regulations.

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