



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2024-0209; FRL-11948-01-R9]

### Air Plan Approval; California; Mojave Desert Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD or “District”) portion of the California State Implementation Plan (SIP). The revisions concern recodification of prohibitory and administrative rules used by the District to regulate air pollutants under the Clean Air Act (CAA or the Act). The EPA is proposing to update the California SIP to reflect the recodified rules. The EPA is taking comments on this proposal and plans to follow with a final action.

**DATES:** Comments must be received on or before [**Insert date 30 days after date of publication in the *Federal Register***].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2024-0209 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at [evanshopper.lakenya@epa.gov](mailto:evanshopper.lakenya@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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### **I. The State’s Submittal**

#### *A. What is the background for this proposed action?*

Under the CAA, the EPA has established National Ambient Air Quality Standards (NAAQS) for certain pervasive air pollutants, including, among others, ozone and particulate matter (PM). Under CAA section 110(a), states are required to adopt and submit SIPs to implement, maintain, and enforce the NAAQS. Under CAA section 107(d), the EPA has designated all areas of the country as attainment, nonattainment, or unclassifiable for the NAAQS. Areas designated as nonattainment must adopt and submit SIP revisions that, among

other things, provide for attainment of the NAAQS by the applicable attainment date.

The MDAQMD regulates sources of air pollution within California's "Mojave Desert Air Basin," which lies within the previously-designated "Southeast Desert Air Basin."<sup>1</sup> The MDAQMD's jurisdiction includes the desert portion of San Bernardino County and the far eastern portion of Riverside County. The EPA has designated two areas in the San Bernardino County portion of the District as nonattainment areas for PM equal to or less than 10 microns in diameter (PM<sub>10</sub>): (1) the Trona planning area, located in the northwestern portion of the county, and (2) the larger San Bernardino nonattainment area that covers the remaining portion of San Bernardino County regulated by the MDAQMD, excluding the Trona planning area.<sup>2</sup> A portion of San Bernardino County within the District is also in the West Mojave Desert ozone nonattainment area.<sup>3</sup> The Riverside County portion of the District is designated as unclassifiable/attainment for all the NAAQS.

In 1972, when the original California SIP was submitted and approved by the EPA, the San Bernardino County Air Pollution Control District (SBCAPCD) had jurisdiction over stationary sources within all of San Bernardino County. On July 16, 1975, the Los Angeles County Air Pollution Control District (LACAPCD), Orange County Air Pollution Control District (OCAPCD), Riverside County Air Pollution Control District (RCAPCD), and SBCAPCD were unified into the Southern California Air Pollution Control District (SoCalAPCD). On February 1, 1977, California split the SoCalAPCD into four agencies. The western coastal area became regulated by the South Coast Air Quality Management District (SCAQMD) and the remaining eastern desert portions of Los Angeles, San Bernardino, and Riverside Counties were separated back into air pollution control districts for each county (i.e.,

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<sup>1</sup> The two air basins are described in the California Air Resources Board's (CARB's) *Initial Statement of Reasons for Proposed Rulemaking, Proposed Amendments to Divide the Southeast Desert Air Basin and to Modify the Boundary of the South Coast Air Basin and Proposed Amendments to the Related Agricultural Burning Regulations*, April 1996.

<sup>2</sup> 40 CFR 81.305 – "California – PM-10" table of area designations.

<sup>3</sup> 40 CFR 81.305. The West Mojave Desert ozone nonattainment area also includes the Antelope Valley portion of Los Angeles County.

LACAPCD, SBCAPCD, and RCAPCD). The original jurisdiction of the SCAQMD covered an area referred to as the “South Coast Air Basin” that included all of Orange County and the western non-desert portions of Los Angeles, Riverside, and San Bernardino Counties. The jurisdiction of the LACAPCD, SBCAPCD, and RCAPCD extended over a portion of an air basin referred to as the “Southeast Desert Air Basin.”<sup>4</sup>

The Southeast Desert Air Basin portion of Riverside County was added to the SCAQMD on December 1, 1977. Effective December 1, 1977, under state law, all SCAQMD Rules and Regulations became applicable within the Southeast Desert portion of Riverside County.<sup>5</sup> In 1982, the applicability of SCAQMD rules that had been approved as part of the California SIP was extended to the Southeast Desert portion of Riverside County.<sup>6</sup> On July 1, 1993, the SBCAPCD was re-formed as the MDAQMD. On July 1, 1994, the Palo Verde Valley area in far eastern Riverside County (and that is a part of the Southeast Desert portion of Riverside County) left the SCAQMD and joined the MDAQMD.<sup>7</sup>

An outgrowth of the complicated regulatory history of the MDAQMD is that the applicable SIP for the area the District regulates consists of a mixture of rules from current and former agencies. Rules adopted by MDAQMD apply District-wide; SBCAPCD rules apply only in the San Bernardino County portion of the District; and rules adopted by the RCAPCD, SoCalAPCD or the SCAQMD only apply in the Riverside County portion of the District.

*B. What rules did the State submit to rescind or replace?*

This proposal covers portions of SIP revisions submitted by the California Air Resources

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<sup>4</sup> 43 FR 25684 (June 14, 1978).

<sup>5</sup> Letter dated August 11, 1980, from Gary Rubenstein, Deputy Executive Officer, CARB to Paul DeFalco, Jr., EPA Regional Administrator – approved at 47 FR 25013 (June 9, 1982).

<sup>6</sup> 47 FR 25013 (June 9, 1982).

<sup>7</sup> The Palo Verde Valley portion of the MDAQMD covers an area approximately 30 miles wide along the eastern boundary of the county adjoining the State of Arizona.

Board (CARB) to the EPA on September 23, 2022<sup>8</sup>, November 30, 2022<sup>9</sup>, May 11, 2023<sup>10</sup>, and October 13, 2023<sup>11</sup>. Table 1 lists the MDAQMD rules that were submitted for inclusion in the SIP with the date each rule was adopted and then submitted by CARB.<sup>12</sup> When these rules were submitted, CARB also requested rescission of the analogous rules in the SIP that were adopted by SCAQMD<sup>13</sup> and apply within the Riverside County portion of the District. Table 2 lists the rules to be rescinded by this action with the dates that they were adopted by SCAQMD, approved by the EPA (with the associated *Federal Register* citations), subsequently rescinded by MDAQMD, and then submitted by CARB for rescission.

**TABLE 1 – SUBMITTED RULES**

<b>Local agency</b>	<b>Rule number</b>	<b>Rule title</b>	<b>Adopted/ amended/ revised date</b>	<b>Submittal date</b>
MDAQMD	104	Reporting of Source Test Data and Analyses	December 19, 1988	October 13, 2023
MDAQMD	404	Particulate Matter – Concentration	July 25, 1977	May 11, 2023
MDAQMD	405	Solid Particulate Matter – Weight	July 25, 1977	May 11, 2023
MDAQMD	407	Liquid and Gaseous Air Contaminants	July 25, 1977	September 23, 2022
MDAQMD	408	Circumvention	July 25, 1977	May 11, 2023
MDAQMD	409	Combustion Contaminants	July 25, 1977	May 11, 2023
MDAQMD	443	Labeling of Solvents	July 25, 1977	May 11, 2023
MDAQMD	468	Sulfur Recovery Units	July 25, 1977	November 30, 2022
MDAQMD	469	Sulfuric Acid Units	July 25, 1977	November 30, 2022
MDAQMD	472	Reduction of Animal Matter	July 25, 1977	May 11, 2023

<sup>8</sup> CARB submitted the SIP revision electronically on September 23, 2022, as an enclosure to a transmittal letter of the same date.

<sup>9</sup> CARB submitted the SIP revision electronically on November 30, 2022, as an enclosure to a transmittal letter dated November 22, 2022. CARB later clarified that, in addition to the rule rescissions requested for SCAQMD Rules 468 and 468, the November 30, 2022 submission was also intended to include the submission of replacement rules, MDAQMD Rules 468, “Sulfur Recovery Units” and 469, “Sulfuric Acid Units.” See CARB email dated April 4, 2024, from Ariel Fideldy (CARB) to Jefferson Wehling (EPA), Subject: “CARB Clarification regarding November 30, 2022 submittal of MDAQMD Rules.”

<sup>10</sup> CARB submitted the SIP revision electronically on May 11, 2023, as an enclosure to a transmittal letter dated May 10, 2023.

<sup>11</sup> CARB submitted the SIP revision electronically on October 13, 2023, as an enclosure to a transmittal letter of the same date.

<sup>12</sup> These rules have adoption dates prior to the formation of the MDAQMD because the rules were not revised or amended when the MDAQMD was formed and first adopted its rulebook. The rules were SBCAPCD rules and were merely recodified as being MDAQMD rules that apply District-wide.

<sup>13</sup> The versions of SCAQMD Rules 104, 408, 443, 468, 469 and 472 that are currently part of the applicable SIP for the Riverside County portion of the MDAQMD were adopted by the SoCalAPCD, rather than the SCAQMD.

**TABLE 2 – SUBMITTED RULE RESCISSIONS**

<b>Local agency</b>	<b>Title</b>	<b>Adopted/ amended/ revised date</b>	<b>SIP approval date and FR citation</b>	<b>Date of rescission by MDAQMD</b>	<b>Submittal date</b>
SCAQMD Rule 104	Reporting of Source Test Data and Analyses	January 9, 1976	June 14, 1978, 43 FR 25684	April 24, 2023	October 13, 2023
SCAQMD Rule 408	Circumvention	May 7, 1976	June 14, 1978, 43 FR 25684	April 25, 2022	May 11, 2023
SCAQMD Rule 443	Labeling of Solvents	January 1, 1977	June 14, 1978, 43 FR 25684	October 24, 2022	May 11, 2023
SCAQMD Rule 468	Sulfur Recovery Units	October 8, 1976	June 14, 1978, 43 FR 25684	August 22, 2022	November 30, 2022
SCAQMD Rule 469	Sulfuric Acid Units	October 8, 1976	June 14, 1978, 43 FR 25684	August 22, 2022	November 30, 2022
SCAQMD Rule 472	Reduction of Animal Matter	May 7, 1976	June 14, 1978, 43 FR 25684	August 22, 2022	May 11, 2023

The September 23, 2022, November 30, 2022, May 11, 2023, and October 13, 2023 SIP submissions were deemed complete by operation of law with respect to the completeness criteria in 40 CFR part 51, appendix V on March 23, 2023, May 30, 2023, November 11, 2023, and April 13, 2024, respectively.

*C. Are there other versions of the rules?*

We approved earlier versions of the rules listed in Table 1 when they were adopted and submitted by the MDAQMD’s predecessor agency, the SBCAPCD. Table 3 lists the previously SIP-approved rules along with their local adoption dates and EPA approval citations. If we finalize this action as proposed, the SBCAPCD rules in Table 3 will be superseded in the applicable SIP by the corresponding MDAQMD rules listed in Table 1.

**TABLE 3 – SIP RULES TO BE SUPERSEDED UPON APPROVAL OF SUBMITTED RULES LISTED IN TABLE 1**

<b>Local agency</b>	<b>Rule number</b>	<b>Rule title</b>	<b>Adopted/ amended/ revised date</b>	<b>SIP approval date and FR citation</b>
SBCAPCD	104	Reporting of Source Test Data and Analyses	December 19, 1988	November 27, 1990, 55 FR 49281
SBCAPCD	404	Particulate Matter – Concentration	July 25, 1977	December 21, 1978, 43 FR 59489
SBCAPCD	405	Solid Particulate Matter – Weight	July 25, 1977	December 21, 1978, 43 FR 59489
SBCAPCD	407	Liquid and Gaseous Air Contaminants	February 1, 1977	September 8, 1978, 43 FR 40011
SBCAPCD	408	Circumvention	February 1, 1977	September 8, 1978, 43 FR 40011
SBCAPCD	409	Combustion Contaminants	February 1, 1977	September 8, 1978, 43 FR 40011
SBCAPCD	443	Labeling of Solvents	February 1, 1977	September 8, 1978, 43 FR 40011
SBCAPCD	468	Sulfur Recovery Units	February 1, 1977	September 8, 1978, 43 FR 40011
SBCAPCD	469	Sulfuric Acid Units	February 1, 1977	September 8, 1978, 43 FR 40011
SBCAPCD	472	Reduction of Animal Matter	February 1, 1977	September 8, 1978, 43 FR 40011

*D. What is the purpose of the submitted rule revisions?*

Emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) contribute to the production of ground-level ozone and smog which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM<sub>10</sub>, contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

Section 110(a) of the CAA requires states to submit regulations that control emissions of criteria air pollutants or their precursors, including NO<sub>x</sub>, VOCs, and PM, as part of the SIP. Over the years, MDAQMD's predecessor agency, the SBCAPCD, adopted many administrative and prohibitory rules to meet SIP requirements, including those that are the subject of this proposed action, for the San Bernardino County portion of the MDAQMD. The RCAPCD, SoCalAPCD,

and SCAQMD did the same for the Riverside County portion of the MDAQMD. However, the SBCAPCD, RCAPCD, and SoCalAPCD no longer exist, and SCAQMD no longer has jurisdiction in the areas currently regulated by the MDAQMD. The purpose of the SIP submissions for which action is proposed is to align the SIP versions of the rules with those that are in effect in the MDAQMD.

The EPA's technical support document (TSD) has more information about these rules.

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the rules?*

Under CAA section 110(l), SIP revisions must be adopted by the state, and the state must provide reasonable public notice and hearing prior to adoption.<sup>14</sup> Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

In ozone nonattainment areas classified as Moderate or above, the CAA requires implementation of Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs and NO<sub>x</sub> (see CAA section 182(b)(2)). This requirement applies in the portion of San Bernardino County that lies within the "West Mojave Desert" nonattainment area that is classified as Severe for the 2008 and 2015 ozone NAAQS.<sup>15</sup> States must also implement reasonably available control measures (RACM), including RACT, in Moderate PM<sub>2.5</sub> or PM<sub>10</sub> nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). The MDAQMD regulates two PM<sub>10</sub> nonattainment areas in San Bernardino County that are classified as Moderate for the

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<sup>14</sup> We have reviewed the SIP submissions covered in this proposed action for compliance with CAA procedural requirements and found that all such requirements have been met.

<sup>15</sup> 40 CFR 81.305.

PM<sub>10</sub> NAAQS,<sup>16</sup> and thus the RACM requirement applies to these areas. However, in this proposed action, we are evaluating the submitted rules and rescissions as rule recodifications and are not evaluating the rules for compliance with RACT or RACM requirements at this time.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. Memorandum, from Johnnie L. Pearson, Chief, Regional Activities Section, EPA Office of Air Quality Planning and Standards to Chief, Air Branch, Regions I-X, “Review of State Regulation Recodifications,” February 12, 1990.

*B. Do the rules meet the evaluation criteria?*

The purpose for the submission of the MDAQMD rules is to align the outdated versions of the rules in the SIP with the versions found in the current District rulebook. To do this, CARB submitted MDAQMD rules, which apply District-wide, to replace the versions of the rules in the SIP that are identical but currently only apply to a geographic subset of the District (San Bernardino County or Riverside County).

The MDAQMD rules in Table 1 are identical to the SBCAPCD rules in Table 3 that are currently in the SIP. Thus, we are proposing the SBCAPCD rules listed in Table 3 will be superseded by our proposed approval of the MDAQMD rules in Table 1. For the portion of Riverside County regulated by MDAQMD, the SIP identifies rules adopted by the SCAQMD. MDAQMD Rules 104, 408, 443, 468, 469 and 472 in Table 1 are identical to the comparable SCAQMD rules listed in Table 2. Similarly, we are proposing that approval of the MDAQMD

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<sup>16</sup> Id.

rules in Table 1 allows for the rescission of the SCAQMD rules in Table 2.

We are reviewing these particular rules as recodifications of existing rules and are not reviewing the substance of the rules at this time.<sup>17</sup> The EPA is now merely proposing to approve the District-wide versions of rules to replace identical rules that were previously-approved by the EPA but that only apply to a geographic subset of the District. The EPA's approval of the District-wide rules, at this time, does not imply any position with respect to the approvability of the substantive requirements in the rules. To the extent the EPA issues any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, the EPA will continue to require the State to correct any such rule deficiencies despite the EPA's proposed approval of this recodification.

### *C. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve the submitted rules in Table 1 because they represent recodifications of existing SIP rules. These rules would supersede the rules in Table 3. The EPA is also proposing to approve the rescissions listed in Table 2 because they mirror recodified rules proposed for approval. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the *Federal Register***]. If we take final action to approve the submitted rules, our final action would incorporate the submitted rules into the SIP and would remove from the applicable SIP the rules that have been rescinded or superseded.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD rules listed in Table 1 of this preamble, which includes certain administrative and prohibitory rules that control emissions of NO<sub>x</sub>,

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<sup>17</sup> Memorandum dated February 12, 1990, from Johnnie L. Pearson, Chief, Regional Activities Section, EPA Office of Air Quality Planning and Standards to Chief, Air Branch, Regions I-X, "Review of State Regulation Recodifications."

VOCs, and PM. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k); 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record

inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: July 1, 2024.

**Martha Guzman Aceves,**  
*Regional Administrator,*  
*Region IX.*

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