

# County Agricultural Commissioner (CAC) Work Plans, Pesticide Use Enforcement Program Planning Guidance

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**Purpose** To provide guidance in the development of a county’s pesticide use enforcement Work Plan.

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**Topics** This document contains the following topics:

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# CAC Enforcement Work Plans - General Guidance

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**Work plans** Each County Agricultural Commissioner (CAC) must develop a pesticide use enforcement work plan for approval by the Department of Pesticide Regulation (DPR). The work plan must contain the “**core enforcement program**” areas and other components outlined below.

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**Core enforcement program** The “**core enforcement program**” encompasses program areas critical to meeting pesticide regulatory program mandates and strategic goals. The core enforcement program consists of the following:

- Restricted materials permitting.
- Compliance monitoring.
- Enforcement response.

The CAC’s work plan should include a commitment to continually assess, monitor, and evaluate the core program areas in their enforcement program and implement program improvements where needed. For example, if during the course of the work plan cycle, an evaluation indicates a significant lack of program effectiveness, the CAC should take immediate corrective action. If this requires resource redirection, the CAC should contact their Enforcement Branch Liaison (EBL) as soon as possible.

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**Work plan performance evaluation frequency** The CAC develops a Work Plan that covers one, two, or three years. The CAC, along with their EBL, should determine the Work Plan frequency that best fits the complexity of their program. During the course of a multi-year work plan, the CAC should amend their work plan if faced with unanticipated priorities or emergency projects that affect their ability to carry out core program functions.

The EBL will work with the CAC to determine the frequency of the DPR Performance Evaluation required by Title 3, California Code of Regulations (3 CCR) section 6394(a). A CAC may request annual evaluations even though it has a multi-year work plan.

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**Work plan approval** DPR will approve county enforcement work plans that have clear goals and deliverables and are focused on core program implementation and any DPR-identified priorities. DPR will not approve work plans where CAC-proposed activities detract from the CAC’s ability to implement their core program responsibilities. EBLs will assist the CAC in identifying innovative ways to combine the desirable activities with their core program responsibilities.

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## CAC Enforcement Work Plans - General Guidance, Continued

**Required work plan** DPR wants enforcement work plans to be simple to prepare, negotiate, understand, implement, and evaluate. Work plans should contain the following components:

<b>Component</b>	<b>Function</b>
County Program	<ul style="list-style-type: none"> <li>• A general description of your enforcement program components.</li> <li>• Describe program highlights or accomplishments that the county will continue to build on during the next work plan cycle.</li> <li>• Describe expected program changes in general terms (for example, a 25 percent reduction in structural pest control inspections, no outreach events for applicators, increased fieldworker inspections).</li> </ul>
County Resources	<ul style="list-style-type: none"> <li>• A description of resources for the implementation of your work plan.</li> <li>• Describe normal or expected workload for each core area (for example, total restricted materials permits issued and Notices of Intent NOI approved), DPR priorities, local program issues, and staff and resources required for implementation (for example, the number of full-time staff needed for normal or expected workload).</li> </ul>
Corrective Actions	<ul style="list-style-type: none"> <li>• A description of completed corrective actions, if prior DPR evaluation(s) contain agreed-upon corrective actions.</li> <li>• Describe future corrective actions and the measure(s) to be taken.</li> </ul>
Core Program	<ul style="list-style-type: none"> <li>• A listing of core program areas and your county's activities. Address each DPR core program area listed on page two or explain why it does not apply to your county program. See specific core program work plan guidance on the following pages. Make sure work plan commitments are commensurate with expected workload and can be met.</li> </ul>
DPR-Requested Activities	<ul style="list-style-type: none"> <li>• A listing of priority and other activities identified by DPR in the most recent enforcement letter on Priorities and Other Activities, which are in addition to the core program areas. Address each activity or describe why it does not apply to your county program.</li> </ul>
Additional CAC Activities	<ul style="list-style-type: none"> <li>• A listing and description of expected outreach presentations or activities.</li> <li>• A description of related pest control enforcement activities (for example, pest quarantine/exclusion, public health pest control, special projects)</li> <li>• Other desirable CAC-proposed activities are optional. Workload for desirable activities depends on CAC resource availability. If the CAC adds activities, the work plan must describe the planned activities, estimated resources, and expected program benefit.</li> </ul>

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# The Core Enforcement Program

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## Core enforcement program

The “**core enforcement program**” areas are restricted materials permitting, compliance monitoring, and enforcement response.

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## Restricted Materials Permitting

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### Restricted materials permitting - Purpose

DPR and the CACs must assure that the restricted materials permit system protects people and the environment while allowing for effective pest management. To assure effective implementation of the permit system, CACs must:

- Continuously evaluate hazards posed by proposed applications
- Familiarize themselves with the Pesticide Use Enforcement Program Standards Compendium, Volume 3 *Restricted Materials and Permitting*

Generally, applications of California restricted materials may occur only under a permit issued by the CAC. The CAC must evaluate each proposed application before it occurs and document their determination that the application posed no unacceptable risks or that the permit was conditioned to mitigate identified hazards. Per 3 CCR section 6436, CACs also conduct a pre-application site evaluation when they determine that only an on-site evaluation will allow an appropriate assessment of risk.

DPR’s evaluation of the CAC’s permit system focuses on business process evaluation and improvement to assure the most efficient use of available resources. The following provides guidance for incorporating restricted materials permitting program priorities into the CAC’s work plan.

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## The Core Enforcement Program, Continued

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### **Restricted Materials Permitting - Process**

The restricted materials permitting portion of the CAC work plan should briefly describe the current procedures or business process, findings from previous evaluations, and any planned improvements. The CAC should document all program changes resulting from their ongoing assessment. This allows DPR and the CAC to review needs and to adjust or redirect workload to match resource availability.

The CAC's procedures should focus on the following:

- Identification and evaluation of all sensitive sites including residential areas, schools, crops, wetlands, waterways, and critical habitats of rare, endangered, or threatened species and livestock.
  - Mitigation alternatives and site specific use practices.
  - Review and evaluation of Notices of Intent (NOIs) to ensure environmental and human health conditions have not changed since the permit was issued.
  - Certification of private applicators.
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### **Restricted Material Permitting - Site evaluation**

The Site Evaluation work plan should utilize the CAC's knowledge of pesticide hazards, local conditions, cropping, and fieldwork patterns, as well as handler, permittee, and adviser compliance histories to address local, multi-county, and/or regional issues. Specifically, the plan should address:

1. High priority situations and proposed level of monitoring:
    - Pesticide by crop/chemical (fumigant), environmental conditions, proximity to sensitive sites, etc.
    - As resources allow, certain on-site pre-application inspections
  2. The percent of total approved NOIs to be site evaluated. CACs should not limit themselves to evaluating five percent of approved NOIs if resources allow and local situations require more. Pre-application site evaluation can prevent adverse episodes from occurring and is critical to the restricted materials permit program effectiveness.
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## The Core Enforcement Program, Continued

### Restricted Material Permitting – Program evaluation

When evaluating the effectiveness of the CAC’s Restricted Material core program, DPR will consider the following:

Effectiveness Based On:	Suggested Questions to Ask...
<ul style="list-style-type: none"> <li>• Occurrence of adverse incidents where CAC had a high degree of control</li> <li>• Program procedures and process</li> </ul>	<ol style="list-style-type: none"> <li>1. Does the CAC evaluate all required restricted materials permit information before the application takes place?               <ol style="list-style-type: none"> <li>a) If yes:                   <ul style="list-style-type: none"> <li>▪ Was it effective? Did any adverse effects still occur?</li> <li>▪ What were the costs of a full evaluation to the CACs program? Did they give up other activities?</li> </ul> </li> <li>b) If no:                   <ul style="list-style-type: none"> <li>▪ Why? Resource limitations? Need better business process or procedures?</li> <li>▪ What are the potential risks to the effectiveness of the program?</li> <li>▪ What can be done to reduce risks and improve procedures or business process?</li> </ul> </li> </ol> </li> <li>2. Did the CAC implement a site-evaluation program?               <ol style="list-style-type: none"> <li>a) If yes:                   <ul style="list-style-type: none"> <li>▪ Was it responsive to program needs/changes?</li> <li>▪ Was it effective? Was it preventative?</li> <li>▪ Was it comprehensive? Were all sectors or risk factors covered?</li> <li>▪ Did the CAC develop effective approaches that could be shared with other CACs?</li> </ul> </li> <li>b) If no:                   <ul style="list-style-type: none"> <li>▪ Why?</li> <li>▪ What are the potential or actual risks to the effectiveness of the permit program?</li> <li>▪ What improvements can be made?</li> </ul> </li> </ol> </li> <li>3. Are there risks to the program’s effectiveness that DPR needs to address to better support the CAC’s permit program?</li> </ol>

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## The Core Enforcement Program, Continued

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### Compliance Monitoring

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#### **Compliance Monitoring - Purpose**

DPR's goal to reduce pesticide risks to people and the environment depends on an effective and comprehensive compliance monitoring program. Conducting Inspections and Investigations allows CACs to identify and respond to potential hazards to workers, the public, and the environment.

Effective and comprehensive compliance monitoring is essential to assure the safety of pesticide handlers, fieldworkers, the public, and the environment. Compliance monitoring includes pesticide use and records inspections, episode and complaint investigations, and surveillance.

To assure an effective compliance monitoring program, CACs must:  
Conduct broad-based and comprehensive Inspection types.  
Identify the number and types of inspections necessary to maintain an enforcement presence effective at deterring violators.  
Follow the Pesticide Use Enforcement Program Standards Compendium Volume 4, *Inspection Procedures*.  
Assure thorough and timely Investigations.  
Familiarize themselves with the Pesticide Use Enforcement Program Standards Compendium Volume 5, *Investigation Procedures*.

The EBL will work with the CAC to schedule the DPR oversight inspections required to meet the joint U.S. EPA/DPR/CAC agreement goals.

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#### **Compliance Monitoring - Inspections**

As with site monitoring plans, inspection strategies developed by CACs, either individually or regionally, can be more effective and comprehensive than a plan developed by DPR. An effective inspection strategy encompasses a broad spectrum of pesticide handling situations and responds quickly to local issues. Specifically, the work plan should focus on the following:

1. A balance between planned and spontaneous inspections:
  - Targeted: specific crop, application method, grower vs. business
  - Random inspections
2. Prioritize inspections based on situation and risk. Consider:
  - Violation history and/or pesticide episode occurrence
  - Local and/or state priorities
  - Pesticide use activities, etc.

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## The Core Enforcement Program, Continued

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### Compliance Monitoring - Inspections (continued)

3. Effectiveness in terms of:
    - Response to changes
    - Improvements in overall compliance rates
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### Compliance Monitoring - Investigations

DPR and the CACs have responsibility to investigate episodes that may involve potential or actual human illness or injury, property damage, loss, or contamination, and environmental effects alleged to be the result of the use or presence of a pesticide, in a timely and thorough manner. The work plan should focus on the following:

- Timely initiation and completion of all non-priority investigations. Reducing initiation and completion times will result in improved evidence gathering.
  - Timely Priority Episode investigation initiation and reporting. CACs must initiate priority episode investigations immediately, but in no event will the investigation commence later than three working days, submit an initial notification to DPR, and submit a preliminary update within 15 days.
  - Development and use of investigation plans. CACs should develop investigation plans and use the “elements of the violation analysis” technique to reduce time needed to obtain key evidence and complete the investigation report. Please review the *Investigation Procedures* manual (Volume 5 of the Pesticide Use Enforcement Program Standards Compendium) Investigative Plan.
  - Thorough report preparation. Complete investigation reports include a discussion of all suspected and causal violations discovered during the investigation. Incomplete reports will be returned to the CACs for additional information.
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## The Core Enforcement Program, Continued

### Compliance Monitoring - program Evaluation

The table below shows the criteria DPR will consider when evaluating the effectiveness of the compliance monitoring core program.

Effectiveness Based On:	Suggested Questions to Ask...
<ul style="list-style-type: none"> <li>• Comprehensiveness of the Inspection program</li> <li>• Completeness, accuracy, and timeliness of Investigations</li> </ul>	<ol style="list-style-type: none"> <li>1. Is the CAC's compliance monitoring program comprehensive? (See second item under the restricted materials permit program area for related questions.)</li> <li>2. Does the CAC conduct pesticide use inspections and surveillance?               <ol style="list-style-type: none"> <li>a) What percent is planned? What percent is random?</li> <li>b) Is it effective?                   <ul style="list-style-type: none"> <li>▪ Did they find new or repeat violators?</li> <li>▪ Did it help the CAC improve the compliance monitoring program?</li> </ul> </li> <li>c) Is it an appropriate resource use?</li> <li>d) What improvements can be made?</li> </ol> </li> <li>3. Are the CAC investigations complete and timely?               <ol style="list-style-type: none"> <li>a) If not, what caused these problems?                   <ul style="list-style-type: none"> <li>▪ How many were sent back for additional information? What information was needed?</li> <li>▪ How many were late?</li> </ul> </li> <li>b) What risks do these problems present to the compliance monitoring program?</li> <li>c) What improvements can be made?</li> <li>d) Are the majority complete and timely?</li> </ol> </li> <li>4. Are the CAC investigations effective?               <ol style="list-style-type: none"> <li>a) Do they clearly explain how or why the event occurred?</li> <li>b) Did their investigation allow them to take appropriate enforcement action when violations were discovered?</li> <li>c) Did the investigation outcome allow the CAC to implement preventative measures? At the applicator or business level? Within the local program?</li> </ol> </li> </ol>

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## The Core Enforcement Program, Continued

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### **Enforcement Response**

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#### **Enforcement Response - Purpose**

To realize the full benefits of a comprehensive and effective statewide pesticide regulatory program, DPR and the CACs must apply enforcement authority fairly, consistently, and timely. Achieving compliance is a top priority for both CACs and DPR. The enforcement response regulations provide the tools to help CACs choose the best enforcement option. Our joint enforcement response should emphasize worker and environmental safety by:

- Creating a climate that compels all pesticide users to comply with state laws and regulations through a progressive discipline approach
- Ensuring that compliance, once achieved, is sustainable
- Helping CACs balance the level of enforcement response with their staffing resources
- Improving enforcement response guidance

The following provides guidance for incorporating enforcement response into CAC work plans.

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#### **Enforcement Response - Implementation**

Emphasis should be placed on detecting and deterring “repeat” violators through compliance monitoring and enforcement response.

- Consider all appropriate enforcement options before taking action. If available options will not result in sustained compliance, refer it to the State for enforcement action, when appropriate.
  - Assure timely responses to ensure against lost or compromised evidence.
  - Respond to all violations with compliance or enforcement action.
  - Choose the response most likely to result in sustained compliance with the most efficient use of resources.
  - In cases of staffing shortages, the greatest effort should be directed at violations that pose the highest risk to people and the environment, and focus on preventing health and safety violations.
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## The Core Enforcement Program, Continued

### Enforcement Response - program Evaluation

The table below shows the criteria DPR will consider when evaluating the effectiveness of the Enforcement Response core program:

Effectiveness Based On:	Suggested Questions to Ask...
<ul style="list-style-type: none"> <li>• Appropriateness and timeliness of enforcement response</li> <li>• Progressiveness of response for repeat violators</li> </ul>	<ol style="list-style-type: none"> <li>1. Are enforcement responses appropriate?               <ol style="list-style-type: none"> <li>a) Do compliance and enforcement actions fit the situations to which they are applied? Are the choices effective? Does the CAC follow the enforcement response regulations?</li> <li>b) Does it seem that similar types of compliance or enforcement actions are applied in a routine manner?</li> <li>c) Are violations and enforcement actions classified correctly?</li> <li>d) Is enforcement response for any industry segment out of balance with the gravity of their violation(s)?</li> </ol> </li> <li>2. Are enforcement actions timely?               <ol style="list-style-type: none"> <li>a) Are enforcement actions done close enough to the time of the incident to provide an effective and relevant reminder of the consequences of the violation?</li> <li>b) Are enforcement actions done close enough to the time of the incident to provide and use credible and reliable evidence?</li> <li>c) Are enforcement actions done in a manner so that case file preparation is not driven solely by an impending statute of limitations?</li> </ol> </li> <li>3. Are enforcement actions for “repeat” violators progressive?               <ol style="list-style-type: none"> <li>a) Are “repeat” actions and penalties (if levied) more severe?</li> <li>b) Is there timely follow-up inspection activity for persons or businesses with previous non-compliances or violations?</li> <li>c) If not, why not?</li> </ol> </li> </ol>

## **Additional DPR Priority Program Areas**

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This includes any additional program priority areas DPR expects to be addressed in the CAC's Work Plan. DPR's priorities and other expected activities are outlined in the most recent letter to CACs on Priorities and Other Activities.

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## DPR Strategic Plan Goals

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### Strategic Plan goals guide program planning

DPR's 2013 Strategic Plan is designed to help us meet our regulatory obligations as described by the Legislature. The enforcement program priorities outlined in this document were chosen as those best suited to achieving statewide strategic goals through local enforcement activities. The CACs pesticide use enforcement programs are instrumental to meeting the vision and mission in the Strategic Plan.

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### DPR Vision and Mission

- Vision: A California where pest management is fundamental to a healthy environment.
  - Mission: To protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management.
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### Strategic Plan goal: Enforce and achieve compliance

The DPR Strategic Plan includes goals to protect people and the environment, enforce and achieve compliance, and ensure environmental justice. This is achieved by:

- Identifying and improving areas of greatest non-compliance.
  - Ensuring that regulatory requirements are practical and enforceable.
  - Ensuring appropriate enforcement actions are taken.
  - Enhancing the effectiveness of inspections and investigations.
  - Enhancing efforts to improve compliance.
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## CAC and DPR Roles and Responsibilities

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### **Purpose of the Pesticide Use Enforcement program**

The primary purpose of California's pesticide regulatory program is to regulate, restrict, or ensure proper stewardship of registered pesticides for:

- Environmental and human health protection
  - A safe workplace for pesticide handlers and for agricultural workers
  - Pest control licensee competency and responsibility
  - The ongoing availability of pesticides essential to the production of food and fiber and the protection of health
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### **DPR responsibility for statewide program**

California law designates DPR as the agency responsible for delivering an effective statewide pesticide regulatory program. DPR directly regulates most aspects of this program; however, the Legislature delegated local administration of pesticide use enforcement to the CACs. The success of the statewide use enforcement program, therefore, depends on the collective enforcement achievements at the local level. To assure successful and consistent local pesticide use enforcement programs, DPR uses its statewide regulatory authority to oversee, evaluate, and improve the CACs' pesticide use enforcement programs (Food and Agricultural Code [FAC] section 2281).

State law also requires DPR to provide CACs with guidance in the form of instructions and recommendations, assistance to CACs in the planning and development of adequate county programs, evaluation of local program effectiveness, and assurance that CACs take corrective actions in areas needing improvement.

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### **CACs responsible for local use enforcement**

Whenever California law places joint enforcement responsibilities on the Director and the CACs, CACs are responsible for the administration of the local program, with few exceptions. The FAC and 3 CCR describe the CAC's enforcement authority, activities they must, or may, conduct to properly administer this program, the requirement to implement the local programs according to state issued guidance, and their obligations to work cooperatively with DPR in the improvement of their programs.

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## CAC and DPR Roles and Responsibilities, Continued

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**CAC discretion** While the FAC and 3 CCR clearly establish DPR’s oversight role, they also grant broad discretion to the CACs in the daily administration of their local pesticide use enforcement programs. The variety of pesticide use in California precludes an effective “one size fits most” enforcement program. DPR cannot provide guidance for every potential contingency. Therefore, the success of our collective program depends on the CACs' ability to make sound decisions and take independent, appropriate, and consistent actions whenever necessary.

DPR will support the decisions made and actions taken by CACs provided they result in fair and effective local pesticide use enforcement programs.

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**Role of DPR written guidance** DPR provides written guidance to assist CACs and their licensed staff in making sound decisions and taking appropriate actions. This guidance also serves to promote statewide uniformity, fairness, and consistency to the extent possible.

Our written guidance does not have the force of law. It may sometimes be inappropriate for a given situation. DPR expects CACs and their staff, as persons licensed to conduct pesticide use enforcement activities, to obtain, analyze, and apply all relevant information in the course of responding to any given situation. This expectation is at the core of DPR and the Legislature’s willingness to grant local authority and discretion to the CACs.

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**Role of Enforcement Branch Liaisons** DPR’s EBLs and supervisors are the Director’s designated representatives in the field. As such, they are the CACs’ primary points of contact concerning the implementation and evaluation of the local pesticide use enforcement program. EBLs are subject matter experts in the areas of pesticide use enforcement and response, episode investigation, and local program evaluation. The EBL's knowledge of local issues and their authority to guide local program improvement foster the consistent and fair implementation of regulatory requirements among independent local programs. The EBL’s actions and assistance, on behalf of the Director, promote an effective statewide use enforcement program.

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