

US EPA ARCHIVE DOCUMENT

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6176-1]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Louisiana's application and determined that its Hazardous Waste Program revision satisfies all the requirements necessary to qualify for final authorization. Unless adverse written comments are received on this action during the review and comment period EPA's decision to approve Louisiana's Hazardous Waste Program revision will take effect as provided below in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: This immediate final rule is effective on December 22, 1998 without further notice, unless the EPA receives adverse comment by November 23, 1998. Should the EPA receive such comments, it will publish a timely document withdrawing this rule.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765-0617 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone (214) 665-6444. Written comments, referring to Docket Number LA-98-1, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross

Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

FOR FURTHER INFORMATION CONTACT:

Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. Revisions to State Hazardous Waste Programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260-266, 268, 273, 270, and 279.

B. Louisiana

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management program. Louisiana received authorization for revisions to its program on January 29, 1990 (54 FR 48889), October 25, 1991 (56 FR 41958), and technical corrections at (56 FR 51762), effective January 23, 1995 and another technical corrections was made at (59 FR 55368-55371), (60 FR 18360), March 8, 1995 (59 FR 66200), October 17, 1995, (60 FR 53707) effective January 2, 1996, March 28, (61 FR 13777-13782) effective June 11, 1996 and December 29, 1997, (62 FR 67572-67577) effective March 16, 1998. On January 6, 1998 and April 17, 1998, Louisiana submitted a final complete program revision applications for additional program approval. The State of Louisiana has also adopted the regulations for Import and Export of Hazardous Waste which is not delegable to the State. However, the requirements of the Import and Export regulations will be administered by the EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the United States constitution.

Today, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 *et seq.*, the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality, which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State. Also, the LDEQ is designated to facilitate communication between the EPA and the State.

The EPA reviewed Louisiana's application and is today making an immediate final decision, subject to review and comment, that Louisiana's Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant authorization for the additional program modifications to Louisiana. The public may submit written comments on EPA's final decision until November 23, 1998. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of Louisiana's program revision shall become effective 60 days from the date this document is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, the EPA will publish either, (1) a withdrawal of the immediate final decision, or (2) a document containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

The Louisiana's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260-266, 268, 273, 270 and 279, that were published in the FR from July 1, 1994, through June 30, 1996. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Recovered Oil Exclusion, [59 FR 38536–38545]; July 28, 1994. (Checklist 135).	Louisiana Revised Statutes (LRS) 30: §2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§105.D.33.b, 105.D.43.g, as amended September 20, 1996, effective September 20, 1996; 3001.B.3, 4105.B.8–9, and 4105.B.12, as amended September 20, 1996; effective September 20, 1996.
2. Removal of the Conditional Exemption for Certain Slag Residues, [59 FR 43496–43500]; as amended August 24, 1994. (Checklist 136).	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991; LHWR Chapter 22. Table 2, as amended January 20, 1996; effective January 20, 1996 and §4139.A.5, as amended May 20, 1997; effective May 20, 1997.
3. Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes, [59 FR 47982–48110]; September 19, 1994, as amended at 60 FR 242–302, January 3, 1995. (Checklist 137).	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991; LHWR §§105.D.28–31, 105.K.1, as amended September 20, 1996; effective September 20, 1996, 105.K.2, as amended June 20, 1998, effective June 20, 1998, 109.Solid waste.5.a.iii, and 1501.C.6 as amended May 20, 1997, effective May 20, 1997, 3001.C.1, 3001.C.3–C.3.a.i, 3001.C.3.b, Chapter 30. Appendix. M, as amended September 20, 1996, effective September 20, 1996, 4139.B.3, as amended May 20, 1997, effective May 20, 1997, 4307, as amended September 20, 1995, effective September 20, 1995, 2201.G.4.b–c, 2201.I.3–4, 2203.A. Debris, 2203.A underlying Hazardous Constituent, 2221.E.I–E.5, 2223.A–A.3, 2223.B, 2223.C, 2225.B, 2225.C, 2227.A, 2227.C.2, 2227.D, 2229.C–C.3, 2233, 2245.A–J, 2246.A, 2246.D.1.a–b, 2246.D.3, 2246.E.–E1, 2247.B.2, 2247.C.4, Chapter. 22.table 2,3,6,7, and 11, as amended January 20, 1996, 2230.B.2, as amended May 20, 1997, effective May 20, 1997.
4. Testing and Monitoring Activities Amendment I, [60 FR 3089–3095]; January 13, 1995. (Checklist 139).	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991; LHWR § 110, as amended September 20, 1996, 1996, effective September 20, 1996.
5. Carbamate Production Identification and Listing of Hazardous Waste; [60 FR 7824–7859] February 9, 1995, as amended at [60 FR 19165], April 17, 1995 and [60 FR 25619], May 12, 1995. (Checklist 140).	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991. LHWR §§4905.A.5–6, 4905.A.7, 105.D.33.d, and 4901 C, Table 2, 4901.E, and F, 4901.G. Table .6, 3105. Table .1, as amended February 20, 1998, effective February 20, 1998.
6. Testing and Monitoring Activities Amendment II, [60 FR 17001–17004], April 4, 1995. (Checklist 141).	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991. LHWR § 110, as amended September 20, 1996, effective September 20, 1996.
7. Universal Waste: General Provisions; [60 FR 25492–25551]; May 11, 1995. (Checklist 142 A).	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991; LHWR §§105.D.48, as amended May 20, 1997, effective May 20, 1997; 109, as amended September 20, 1995; effective September 20, 1995; 305.C.11, as amended May 20, 1997; effective May 20, 1997; 1101.A–E; as amended January 20, 1996; effective January 20, 1996; 1103.C, amended September 20, 1996; effective September 20, 1996; 1501.C.11, as amended May 20, 1997; effective May 20, 1997; 2201.I.5, 3801.A, 3801.B, 3801.C, 3813, 3813.H 3815, 3817, 3817.A–B, 3819, 3823, 3825.A–C.6, 3827, 3829.A–B, 3831.A–H, 3833, 3835–3835.C, 3837, 3839–3839.B, 3841.A.1, 3841.B, 3841.B.1–5, 3845, 3847.A–C.6, 3849, 3851.A–B, 3853.A–H, 3855.A–C.2, 3857–3857.C, 3859, 3861–3861.B, 3863.A–B, 3865.A–B, 3867.A–B, 3869.A–B, 3871–3871.B, 3873.A–B, 3875.A–D, 3877.A–B, 3879–3879.C, 3915.B, 3915.B–B.5, as amended May 20, 1997, effective May 20, 1997; 3911, as amended October 20, 1994, effective October 20, 1994; and 4307, as amended September 20, 1995, effective September 20, 1995. LAC 33:V.3903 is more stringent than 40 CFR 261.5(c)–(c)(6), 3911 and 3915.B.1–5, are more stringent than 40 CFR 261.5(f)(3)(i–vi) and (g)(3)(i–iv), 1101.A–E are more stringent than 40 CFR 262.10(b)–(g), and 3801.D, are more stringent than 40 CFR 261.5(f)(3)(i–vi), and (g)(3)(i–iv), because the State of Louisiana does not recognize the exemption of conditionally exempt small quantity generators. Louisiana generators of 0–100 kg/month must comply with more stringent small quantity generator requirements. Generators who generate more than 1 kg acutely hazardous waste are subject to full regulations. The 40 CFR 261.5(f)(3)(iv) and (g)(3)(iv) equivalent Louisiana citation, LAC 33:VII.301.B.1 (LAC 33:VII.315.N and LAC 33:VII.521.H), is more stringent because solid waste landfills are prohibited from accepting hazardous waste, with the exception of household hazardous waste.
8. Universal Waste Rule: Specific Provisions for Batteries; [60 FR 25492–25551], May 11, 1995. (Checklist 142 B).	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991, LHWR §§105.D.48.a, 305.C.11.a, 1501.C.11.a, 2201.I.5.a, 3801, 3803.A.1–C.2, 3813, 3821.A–A.3.b, 3823.A, 3843.A–A.3.B, 3845.A, 4105.B.2, 4145.A–B, as amended May 20, 1997, effective May 20, 1997; 4105.B.8–12, as amended December 20, 1997, effective December 20, 1997, and 4307, as amended September 20, 1995, effective September 20, 1995.
9. Universal Waste Rule: Specific Provisions for Batteries; [60 FR 25492–25551]; May 11, 1995. (Checklist 142 C)	LRS:30:2180 <i>et seq</i> ; as amended June 14, 1991, effective June 14, 1991; LHWR §§105.D.48.b, 1501.C.11.b, 2201.I.5.b, 305.C.11.B, 3801, 3805.A–D.2, 3813, 3821.B–B.4, 3823.B–C.2, 3841.A, 3841.A.2, 3843.B–B.4, 3845.B–C.2, as amended May 20, 1997, effective May 20, 1997 and 4307, as amended September 20, 1995, effective September 20, 1995.
10. Universal Waste Rule: Specific Provisions for Thermostats, [60 FR 25492–25551]; May 11, 1995. (Checklist 142 D)..	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991; LHWR §§105.D.48.c, 305.C.11.c, 1501.C.11.c, 2201.I.5.c, 3801, 3807.A–C.2, 3813, 3821.C–C.3.b, 3823.D, 3843.C–C.3.b, 3845.D, as amended May 20, 1997, effective May 20, 1997 and 4307, as amended September 20, 1995, effective September 20, 1995.
11. Universal Waste Rule: Petition Provisions to Add a New Universal Waste; [60 FR 25492–25551]; May 11, 1995. (Checklist 142 E)..	LRS 30:2180 <i>et seq</i> , as amended June 14, 1991, effective June 14, 1991; LHWR §§105.H, 105.N.1–4, 3881.A–C, and 3883.A–H, as amended February 20, 1998, effective February 20, 1998.

Federal citation	State analog
12. Removal of Legally Obsolete Rules; [60 FR 33912–33915]; June 29, 1995. (Checklist 144).	LRS 30:2180 <i>et seq.</i> , as amended June 14, 1991, effective June 14, 1991; LHWR §§ 303.H.1–2, 303.K, as amended June 20, 1995, effective June 20, 1995; 501.C.2, as amended February 20, 1998, effective February 20, 1998, 3007.C.5 and 3009.G–I, as amended September 20, 1996, effective September 20, 1996. LAC 501.C.2 is more stringent than 40 CFR 270.10(e) because Louisiana allows applicants to submit a Part II of the application at least 120 days from the date of request while the equivalent Federal citation allows for six months.
13. Liquids in Landfills III, [60 FR 35703–35706]; July 11, 1995. (Checklist 145).	LRS 30:2180 <i>et seq.</i> , as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2515F.2.b, 2515.F.2.c, 4507.F.2.b and 4507.F.2.c, as amended April 20, 1998, effective April 20, 1998.
14. RCRA Expanded Public Participation, [60 FR 63417–63434]; December 11, 1995. (Checklist 148).	LRS 30:2180 <i>et seq.</i> , as amended June 14, 1991, effective June 14, 1991; LHWR §§ 309.M, 517.W, 537.B.2.g.i–ii, 537.B.g.ii(a)–(d), 537.B.2.h, 537.B.2.i–k, 537.C, 701.E, 708.A.1–4, 708.A.b.i–vi, 708.B.3, 708.C.1–6, 3115.B.12, 3115.B.12.a, 3115.B.12.b, 3115.b.12.BI–IV, 3115.B.13, 3115.B.14–17, and 3115.D, as amended April 20, 1998.
15. Amendments to the Definition of Solid Waste; Amendment II, [61 FR 13103–13106]; March 26, 1996. (Checklist 150).	LRS 30:2180 <i>et seq.</i> , as amended June 14, 1991, effective June 14, 1991; LHWR § 105.D.43.g, as amended April 20, 1998, effective April 20, 1998.

Louisiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Louisiana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted final authorization to operate its hazardous waste program as revised, assuming no adverse comments are received as discussed above. Upon effective final approval Louisiana will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also will have primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Louisiana's program and for incorporation by reference of those provisions of Louisiana's statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart T until a later date.

E. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

F. Compliance Executive Order 13045—Protection of Children From Environmental Health Risk and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) the OMB determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency

decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 and 205 of the UMRA, the EPA must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Louisiana's program, and today's action does not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before the EPA establishes any

regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires the EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate, hazardous waste treatments, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

I. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if any agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on

small entities. This rule therefore, does not require a regulatory flexibility analysis.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

K. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

L. Executive Order 12875 Enhancing Intergovernmental Partnerships

Under Executive Order 12875, the EPA may not issue regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of Executive Order 12875 do not apply to this rule.

M. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If the mandate is unfunded, the EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Louisiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that the EPA implements in the Indian country within the State.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 30, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

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