Participant's benefits to Spouse as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits not already allocated to Spouse 1. The second order does not fail to be a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO.

(c) *Timing.* (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because of the time at which it is issued.

(2) The rule described in paragraph (c)(1) of this section is illustrated by the following examples:

Example (1). Orders issued after death. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order, but the administrator finds the order deficient and determines that it is not a QDRO. Shortly thereafter, Participant dies while actively employed. A second domestic relations order correcting the defects in the first order is subsequently submitted to the plan. The second order does not fail to be treated as a QDRO solely because it is issued after the death of the Participant.

Example (2). Orders issued after divorce. Participant and Spouse divorce. As a result, Spouse no longer meets the definition of ''surviving spouse'' under the terms of the plan. Subsequently, the plan administrator receives a domestic relations order requiring that Spouse be treated as the Participant's surviving spouse for purposes of receiving a death benefit payable under the terms of the plan only to a participant's surviving spouse. The order does not fail to be treated as a QDRO solely because, at the time it is issued, Spouse no longer meets the definition of a ''surviving spouse'' under the terms of the plan.

Example (3). Orders issued after annuity starting date. Participant retires and commences benefit payments in the form of a straight life annuity, with respect to which Spouse waives the surviving spousal rights provided under the plan and section 205 of ERISA. Participant and Spouse divorce after Participant's annuity starting date and present the plan with a domestic relations order providing for Spouse, as alternate payee, to receive half of the benefit payments that are made to Participant after a specified future date. Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date.

(d) *Requirements and protections.* (1) Any domestic relations order described in this section shall be subject to the same requirements and protections that apply to qualified domestic relations orders under section 206(d)(3) of ERISA.

(2) The rule described in paragraph (d)(1) of this section is illustrated by the following examples:

Example (1). Type or form of benefit. Participant and Spouse divorce, and their divorce decree provides that the parties will prepare a domestic relations order assigning 50 percent of Participant's benefits under a 401(k) plan to Spouse to be paid in monthly installments over a ten-year period. Shortly thereafter, Participant dies while actively employed. A domestic relations order consistent with the decree is subsequently submitted to the 401(k) plan; however, the plan does not provide for ten-year installment payments of the type described in the order. Pursuant to paragraph (c)(1) of this section, the order does not fail to be treated as a QDRO solely because it is issued after the death of Participant, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan.

Example (2). Segregation of payable benefits. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order under which Spouse would begin to receive benefits immediately if the order is determined to be a QDRO. The plan administrator separately accounts for the amounts covered by the domestic relations order as is required under section 206(d)(3)(H)(v) of ERISA. The plan administrator finds the order deficient and determines that it is not a QDRO. Subsequently, after the expiration of the segregation period pertaining to that order, the plan administrator receives a second domestic relations order relating to the same parties under which Spouse would begin to receive benefits immediately if the second order is determined to be a QDRO. Notwithstanding the expiration of the first segregation period, the amounts covered by the second order must be separately accounted for by the plan administrator for an 18-month period, in accordance with section 206(d)(3)(H) of ERISA and paragraph (d)(1) of this section.

Example (3). Previously assigned benefits. Participant and Spouse divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO assigns a portion of Participant's benefits to Spouse as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits already assigned to Spouse 1. The second order does not fail to be treated as a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO. The second order, however, would fail to be a QDRO under section 206(d)(3)(D)(iii) and paragraph (d)(1) of this section because it assigns all or a portion of Participant's benefits that are already assigned to Spouse 1 by the prior QDRO.

Signed at Washington, DC, this 28th day of February, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–3820 Filed 3–6–07; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0658; FRL–8116–9]

Polymer of 2-Ethyl-2-(Hydroxymethyl)-1,3-Propanediol, Oxirane, Methyloxirane, 1,2-Epoxyalkanes; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of polymer of 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes; when used as inert ingredients in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of polymer of 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes.

DATES: This regulation is effective March 7, 2007. Objections and requests for hearings must be received on or before May 7, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0658. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the

index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0658 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 7, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0658, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 20, 2006 (71 FR 76321) (FRL–8104–4), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6E7079) by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing exemptions from the requirement of a tolerance for residues of polymer of 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes; CAS Reg. No. 903890–89–1 when 1,2-epoxyalkane is 1,2-epoxydodecane; CAS Reg. No. 903890–90–4 when 1,2-epoxyalkane is 1,2-epoxyhexadecane; and CAS Reg. No. 893427–80–0 when 1,2-epoxyalkane is 1,2-epoxyoctadecane. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *'' and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents;

and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymers are not cationic polymers nor are they reasonably anticipated to become a cationic polymers in a natural aquatic environment.

2. The polymers do contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymers do not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymers are neither designed nor can they be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymers are not water absorbing polymers with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymers, also meet as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymers' number average MW of 16,000 to 20,000 are greater than or equal to 10,000 daltons. The polymers contain less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, the polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes meets all the criteria for a polymers to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposures were possible. The number average MW of polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes is in the range of 16,000 to 20,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes and any other substances and polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes do not appear to produce toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes have common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes are endocrine disruptors.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of polymer of 2-ethyl-2-(hydroxymethyl)-1,3 propanediol, oxirane, methyloxirane, 1,2-epoxyalkanes from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 1 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960 the table is amended by adding alphabetically polymers to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * *	* *
Oxirane, decyl-, reaction products with polyethylene-polypropylene glycol ether with trimethylolpropane (3:1).	903890–89–1
Oxirane, hexadecyl-, reaction products with polyethylene-polypropylene glycol ether with trimethylolpropane (3:1).	893427–80–0
Oxirane, methyl-, polymer with oxirane, ether with 2-ethyl-2-(hydroxymethyl) – 1,3 - propanediol (3:1), reaction products with tetradecyloxirane.	903890–90–4
* * *	* *

[FR Doc. E7–4083 Filed 3–6–07; 8:45 am]

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