requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference OAC rules 3745–14–01, 3745–14–03, 3745–14–04, and 3745–14–08, with a state effective date of January 28, 2018. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also in this document, as described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Illinois Regulations and Statutes from the Illinois State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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).

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 oxides.

Dated: June 13, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019–13640 Filed 6–26–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0064; FRL–9995–24–Region 8]

South Dakota; Proposed Approval of Revisions to the State Air Pollution Control Rules and to the Permitting Rules for the Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) and Operating Permit Program revisions submitted by the State of South Dakota on October 23, 2015, related to South Dakota's Air Pollution Control Program. The October 23, 2015 submittal revises certain definitions in the Prevention of Significant Deterioration (PSD) permitting rules and general definition section related to greenhouse gases (GHGs). In this rulemaking, we are proposing action on portions of the October 23, 2015 submittal, which were not acted on in our previous final rulemaking published on October 13, 2016. The effect of this rulemaking is to ensure that certain definitions in South Dakota's PSD rules are in compliance with the federal PSD requirements. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 29, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0064 to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to

view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Quality Planning Branch, EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On June 3, 2010 (75 FR 31514), the EPA published a final rule, known as the GHG Tailoring Rule, which, with respect to the CAA PSD permitting program, phased in permitting requirements for GHG emissions from stationary sources. Under its interpretation of the CAA at the time, the EPA determined it was necessary to avoid an unmanageable increase in the number of sources that would be required to obtain PSD permits under the CAA because the sources emitted or had the potential to emit GHGs at or above the applicable major source and major modification thresholds. In Step 1 of the GHG Tailoring Rule, the EPA limited application of PSD requirements to sources only if they were subject to PSD ''anyway'' due to the emissions of other non-GHG pollutants. These sources were referred to as ''anyway'' sources. In Step 2 of the GHG Tailoring Rule, the EPA applied the PSD permitting requirements under the CAA to sources that were classified as major based solely on their GHG emissions or potential to emit GHGs, and to modifications of otherwise major sources that require a PSD permit because they increased only GHG emissions above the level in the EPA regulations.

On June 23, 2014, the United States Supreme Court addressed the application of PSD and Title V permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or a modification thereof) and thus required to obtain a PSD or title V permit. With respect to PSD, the Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs (anyway sources), contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment effectively vacating the regulations that implemented Step 2 of the EPA's GHG Tailoring Rule. *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at 7–8 (D.C. Cir. April 10, 2015) (Amended Judgment). With respect to PSD, Step 2 applied to sources that emitted only GHGs at or above the thresholds triggering the requirement to obtain a PSD permit. The Amended Judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.'' With respect to PSD Step 2 sources, the D.C. Circuit's Amended Judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.'' The Amended Judgment further ordered that: ''the regulations under review be vacated to the extent they require a stationary source to obtain a title V permit solely because the source emits or has the potential to emit greenhouse gases above the applicable major source thresholds.''

In accordance with the D.C. Circuit's Amended Judgment, on August 19, 2015 (80 FR 50199), the EPA published a final rulemaking titled: ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Vacated Elements.'' In this rulemaking, the EPA removed GHG Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v) from the CFR.

As mentioned, the Amended Judgment specifically ordered that certain EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)) be vacated. In the EPA's final rulemaking titled ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements,'' which was published on August 19, 2015 (80 FR 50199), we state:

> This final action removes from the CFR several provisions of the PSD and title V permitting regulations that were originally promulgated as part of the Tailoring Rule and that the D.C. Circuit specifically identified as vacated in the Coalition Amended Judgment. Because the D.C. Circuit specifically identified the Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v) and the regulations that require the EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds in 40 CFR 52.22, 70.12 and 71.13 as vacated, the EPA is taking the ministerial action of removing these provisions from the CFR.
>
> EPA further states:
>
> The EPA intends to further revise the PSD and title V regulations to fully implement the Coalition Amended Judgment in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

South Dakota's PSD preconstruction permitting program consists of sections 74–36–09–01 through 74–36–09–03. The State's submittal incorporated by reference as of October 23, 2015, the revisions to remove the GHG Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 52.21(b)(49)(v) from their state implementation plan (SIP) in 74:36:09:02(7)–(9) (removing 40 CFR 52.21(b)(49)(v) as well as the references to 40 CFR 52.21(b)(49)(v)). These revisions were approved in 81 FR 70626 and published on October 13, 2016 (see docket).

In this action we propose to approve two additional revisions contained in the State's 2015 submittal: South Dakota's revision to the definition of ''subject to regulation'' in 74:36:01:01(73) [1] and the addition of the new provision in 74:36:09–02(10).[2] In our October 13, 2016 action, we did not act on South Dakota's revisions in 74:36:01:01(73) because it revises the definition of ''regulated NSR pollutant'' and 74:36:09(02)(10) revises language in § 52.21(b)(49)(iv)(b) related to ''regulated NSR pollutant.'' The EPA determined that it was not appropriate to act on any revisions related to definitions as a result of the court's decision at that time because, as mentioned above, the EPA's final rulemaking titled ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements'' stated that a future rulemaking will include revisions to additional definitions in the PSD regulations.

On October 3, 2016, the EPA proposed the additional definition

[1] The State's proposed rule changes appear in the document titled ''Appendix A, Proposed Amendment to ARSD 74–36—Air Pollution Control Program'', which is in the Docket. Appendix A, p. A–14, PDF p. 431.

[2] Appendix A, p. A–175, PDF p. 330.

revisions in ''Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions Under the PSD Program.'' 81 FR 68110. In the 2016 action, the EPA proposed to revise certain definitions in the PSD permitting regulations to fully implement the Amended Judgment. Specifically, we proposed the following.

- The first revision would revise the definitions of ''major stationary source'' and ''major modification'' by repealing all parts of the definition of ''subject to regulation'', except for the first paragraph, which simply serves to codify our interpretation of the term ''subject to regulation.'' Thus, this rulemaking simply proposed retention of the first paragraph in the definition of ''subject to regulation'' at 40 CFR 51.166(b)(48) and 52.21(b)(49) and proposed adding a sentence explaining that pollutants subject to regulation include, but are not limited to, greenhouse gases.
- The second revision would establish a freestanding definition of the term ''greenhouse gases'' at 40 CFR 51.166(b)(31) and 52.21(b)(32). Previously, the definition of this pollutant was located within the definition of ''subject to regulation'' and the EPA simply proposed to move the language that defined GHGs into an independent definition for the term ''greenhouse gases,'' including the method to compute tons per year CO_2 equivalent emissions (CO_2e). We explained that this proposed change to the EPA's definition of GHG in the PSD permitting rules does not change the meaning of the term, as it will be the exact same language as in the existing regulations.[3]

Because South Dakota's revisions are consistent with the D.C. Circuit's amended judgement, the EPA's October 3, 2016, proposed rulemaking does not need to be finalized in order for us to approve South Dakota's revisions.

II. The EPA's Evaluation

A. Chapter 74:36:01:01—Definitions

We are proposing approval to the changes in 74:36:01:01(73). Chapter 74:36:01:01 defines the terms used throughout Article 74:36—Air Pollution Control Program. The State updated 74:36:01:01(73) to reflect the D.C. Circuit's Amended Judgment. In particular, South Dakota modified the definition of ''subject to regulation'' by striking the reference to the definition of ''subject to regulation'' in the part 70 rules (40 CFR 70.2) and replacing it with: ''Subject to regulation means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Greenhouse gases are not subject to regulation unless a PSD preconstruction permit is issued regulating greenhouse gases in accordance with chapter 74:36:09.''

The State's definition of ''subject to regulation'' retains the first paragraph in § 52.21(b)(49), which codifies the interpretation of the term ''subject to regulation,'' which has the effect of revising the definitions of ''major stationary source'' and ''major modification.'' In adopting only the first paragraph of § 52.21(b)(49), the State's definition excludes the exceptions to the definition of ''subject to regulation'' provisions in 40 CFR 52.21(b)(49)(i)–(iv). Those provisions are relevant for the PSD program and are found elsewhere in the State's PSD rules.[4] The State also added the following sentence to the end of the definition of ''subject to regulation'': ''[g]reenhouse gases are not subject to regulation unless a PSD preconstruction permit is issued regulating greenhouse gases accordance with chapter 74:36:09.'' We propose to approve this additional sentence because we do not believe it would reduce the stringency of the SIP definition of ''subject to regulation,'' as compared to the revised definitions in our ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Vacated Elements'' rulemaking, and because it is consistent with the Amended Judgment.

Additionally, the State's revision to 74:36:01:01(73) removed and replaced the reference in that section to the definition of ''subject to regulation'' in 40 CFR 70.2, which we propose to approve in light of the Amended Judgment, which, in effect, ordered the vacatur of the requirement in the part 70 regulations that a stationary source obtain a title V permit solely because it emits or has the potential to emit GHGs above the title V major source threshold. This modification is approvable because it is consistent with the Amended Judgment, which describes the CAA permitting authority regarding GHG emissions, and thus we do not believe it would reduce the stringency of the definition in the SIP compared with the federal definitions of ''subject to regulation'' found in § 51.166(b)(48), § 52.21(b)(49), and § 70.2.

B. Chapter 74:36:09—Prevention of Significant Deterioration

We are proposing approval to the addition of 74:36:09:02(10). Chapter 74:36:09 is South Dakota's PSD preconstruction program for major sources located in areas of the State that are designated attainment for the federal national ambient air quality standards (NAAQS) identified in 74:36:02, which adopts the EPA's PSD rules in 40 CFR 52.21 by reference, noting certain differences. The EPA approved the PSD preconstruction permitting program in South Dakota's SIP. South Dakota's October 23, 2015 submittal added 74:36:09:02(10) as an additional difference from the federal rules, which states that for the purposes of this section, 40 CFR 52.21(b)(49)(iv)(b), the term ''also will have an emissions increase of a regulated NSR pollutant'' means ''also will have a major modification of a regulated NSR pollutant that is not GHGs.'' This provision amends one of the exceptions to the definition of ''subject to regulation'' in the State's PSD rules (''Beginning January 2, 2011, the pollutant GHGs is subject to regulation if: . . . [t]he stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more''). The State's change was not included in either of the EPA's recent actions to amend the PSD applicability rules for GHG emissions (80 FR 50199 and 81 FR 68110, described above). Nevertheless, we propose to approve the change because it is consistent with the intent of our

[3] We note that EPA's proposed rulemaking covered additional revisions, which are not relevant to the State's submission. EPA has not finalized this proposal.

[4] Our October 13, 2016 final action (81 FR 70626) approved the following exception to the State's adoption by reference of the PSD rules. 74:36:09:02(7)–(9), adopts by reference the term ''Subject to regulation'' in 40 CFR 52.21(b)(49), which includes § 52.21(b)(49)(i)–(iv) and conforming amendments, but not § 52.21(b)(49)(v). We note that our 2016 final action did not include a revision the EPA proposed in response to the Amended Judgment that adds a sentence to the end of the first paragraph of 40 CFR 52.21(b)(49) (''Pollutants subject to regulation include, but are not limited to, greenhouse gases as defined in paragraph (b)(32) of this section''). 81 FR 68143. Even if EPA were to finalize its proposal, we do not believe this additional sentence is needed in the South Dakota regulations because the definition applies to all sources, including non-PSD sources, and ''Subject to regulation'' for purposes of PSD is adopted by reference elsewhere in the State's rules.

federal rules since the regulatory definition of ''major modification'' found at [insert either 40 CFR 52.21(b)(2)(i) or South Dakota's equivalent rule provision] is essentially equivalent in meaning to the term ''emissions increase'' as it is defined at 40 CFR 52.21(b)(49)(iii). This change reflects the D.C. Circuit's Amended Judgment in that 74:36:09:02(10) merely emphasizes that a source has to trigger PSD for a non-GHG pollutant before GHGs can become subject to regulation. This modification is approvable because it does not reduce the stringency of the federal definition of ''subject to regulation'' found in § 51.166(b)(48) and § 52.21(b)(49).

III. Proposed Action

For the reasons described in section II of this proposed rulemaking, the EPA is proposing to approve the revisions submitted by South Dakota on October 23, 2015, which were not acted on in 81 FR 70626. Our action is based on an evaluation of South Dakota's revisions against the requirements of CAA sections 110(a)(2)(c) and 502(b), and regulatory requirements under 40 CFR 51.160–164, 40 CFR 51.166, 40 CFR 52.21, 40 CFR part 70 and the D.C. Circuit's Amended Judgment.

IV. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (RFP) toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The South Dakota SIP revisions that the EPA proposes to approve do not interfere with any applicable requirements of the Act. The revisions to the Administrative Rules of South Dakota (ARSD) 74:36:09:02(10) and 74:36:01(73) submitted by South Dakota on October 23, 2015, ensure South Dakota's PSD program is in compliance with the federal PSD requirements. Therefore, CAA section 110(l) requirements are satisfied.

V. Incorporation by Reference

In this rule, the EPA proposes 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 proposes to incorporate by reference the ARSD rules promulgated in 74:36, as described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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 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 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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).

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2019.

Debra H. Thomas,

Regional Administrator, Region 8.

[FR Doc. 2019–13636 Filed 6–26–19; 8:45 am]

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