

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1988 AUG 12 AM 8:57
OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

RULE TYPE: LEGISLATIVE; CITE AUTHORITY 22-6-4c WV Code

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 38

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing
Personal Protective Equipment (Section 4)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DUE TO PRINTING DELAYS, COMMENT PERIOD IS BEING EXTENDED

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 12, 1988 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Terry L. Farley, Administrator
Board of Coal Mine Health and Safety
1615 Washington Street, East
Charleston, West Virginia 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1989 NOV -3 PM 12:36

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

RULE TYPE: Exempt Legislative; CITE AUTHORITY WV Code 22-6-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 38

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing
Personal Protective Equipment ~~SECTION 5 ONLY~~

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON December 15, 1989 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Stephen A. Edens, Health & Safety Administrator

Board of Coal Mine Health and Safety

1615 Washington Street, East

Charleston, West Virginia 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

1988 JUL 25 PM 1:08

OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Coal Mine Health and Safety Board TITLE NUMBER: 36

RULE TYPE: Administrative; CITE AUTHORITY 22-6-4c WV Code

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 38

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing
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TITLE OF RULE BEING PROPOSED:

~~PLEASE NOTE: COMMENT PERIOD IS BEING EXTENDED DUE TO PRINTING
DELAY, AND TO ALLOW TIME TO BE MAILED.~~

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 1, 1988 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Terry L. Farley, Administrator

Board of Coal Mine Health and Safety

1615 Washington Street, East

Charleston, West Virginia 25311

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ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
Board of Coal Mine Health & Safety
Charleston 25311

FILED
1989 NOV -3 PM 12:37
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

M E M O R A N D U M

To: All Persons Interested in Rules and Regulations Constructed by the Board of Coal Mine Health and Safety

From: Stephen A. Edens, Health and Safety Administrator

Date: November 9, 1989

Subj: Title 36, Series 38 - Rules and Regulations Governing Personal Protective Equipment

ACTION: Final Rule - Title 36, Series 38, Section 4 - Requirements for Approved Eye Protection (SECTION 4 ONLY) Effective Date: November 3, 1989

Public Comment Notice - Title 36, Series 38, Section 5 - Requirements for Protective Gloves (SECTION 5 ONLY)

AUTHORITY: These regulations are proposed and amended in accordance with Chapter 22, Article 6, Section 4 of the West Virginia Code.

SUMMARY

The Board of Coal Mine Health and Safety is considering a proposal to amend existing regulations Title 36, Series 38, Section 5 - pertaining to requirements for Protective Gloves. The existing regulations were adopted in June, 1989.

The Board has determined that it may be necessary to amend the Protective Gloves regulation to enhance the scope and effectiveness of this mandatory requirement.

Also attached in this regulation is the final language as amended by the Board, Title 36, Series 38, Section 4 - Requirements for Approved Eye Protection. These requirements became effective November 3, 1989.

Procedural Summary

June 29, 1989: The Board sent out a notice and the proposed amendments to Title 36, Series 38, Section 4 - Requirements for Approved Eye Protection, requesting comments from all interested persons.

August 15, 1989: The Board conducted a public hearing at the Glade Springs Resort in Daniels, West Virginia, to receive comments from all interested persons. After the hearing, the Board instructed the Administrator to compile Findings of Fact and Conclusions of Law (report is on file at the DOE Charleston Regional Office).

October 30, 1989: After reviewing the Findings of Fact and Conclusions of Law report, the Board voted 4 to 1 in favor of the proposed amendment.

Posting and Review of the Regulation

1. Post the public comment notice/regulation for thirty (30) days, immediately upon receipt.
2. Review the regulation with all persons acting in the capacity of underground mine foreman and assistant mine foreman, during the posting period.
3. Review the regulation with all underground employees, during the week following the review with the mine foreman and assistant mine foreman.

Request for Additional Information

Comments are invited from interested persons on the Board's intention to propose amendments to the existing regulations regarding Requirements for Protective Gloves. Comments should be limited to the content of the proposal. All comments or requests for additional information should be in writing, and mailed no later than December 29, 1989, to:

Stephen A. Edens, Health and Safety Administrator
Board of Coal Mine Health and Safety
West Virginia Department of Energy
1615 Washington Street, East
Charleston, West Virginia 25311
(304) 348-3500

Attachment

SAE:te

FINDINGS OF FACT

1. The scale below indicates the number of eye injuries reported for underground mining only, during the 23 month period prior to and after the effective date of the eye protection regulation. (October 1987, Effective Date Eye Protection Regulation).

BEFORE

1985

- 1. NOVEMBER--04
- 2. DECEMBER--05

1986

- 3. JANUARY---03
- 4. FEBRUARY--06
- 5. MARCH-----02
- 6. APRIL-----04
- 7. MAY-----03
- 8. JUNE-----03
- 9. JULY-----00
- 10. AUGUST----06
- 11. SEPTEMBER-03
- 12. OCTOBER---01
- 13. NOVEMBER--03
- 14. DECEMBER--05

1987

- 15. JANUARY---04
- 16. FEBRUARY--06
- 17. MARCH-----02
- 18. APRIL-----06
- 19. MAY-----09
- 20. JUNE-----09
- 21. JULY-----06
- 22. AUGUST----15
- 23. SEPTEMBER-06

TOTAL 111

AFTER

1987

- 1. OCTOBER---07
- 2. NOVEMBER--06
- 3. DECEMBER--06

1988

- 4. JANUARY---05
- 5. FEBRUARY--11
- 6. MARCH-----08
- 7. APRIL-----05
- 8. MAY-----03
- 9. JUNE-----07
- 10. JULY-----04
- 11. AUGUST----07
- 12. SEPTEMBER-04
- 13. OCTOBER---05
- 14. NOVEMBER--05
- 15. DECEMBER--03

1989

- 16. JANUARY---07
- 17. FEBRUARY--02
- 18. MARCH-----05
- 19. APRIL-----02
- 20. MAY-----06
- 21. JUNE-----05
- 22. JULY-----01
- 23. AUGUST----01

TOTAL 115

2. The scale below will show the total of eye injuries reported for underground mining for a 12 month period prior to and 12 months after the effective date of the eye protection regulation:

a. October 1986 to September 1987 = 72 eye injuries reported, (Before Effective Date).

b. October 1987 to September 1988 = 73 eye injuries reported, (After Effective Date).

1986	1987
<u>BEFORE</u>	<u>AFTER</u>
1. OCTOBER-----01	1. OCTOBER---07
2. NOVEMBER----03	2. NOVEMBER--06
3. DECENBER----05	3. DECEMBER--06
1987	1988
4. JANUARY-----04	4. JANUARY---05
5. FEBRUARY----06	5. FEBRUARY--11
6. MARCH-----02	6. MARCH-----08
7. APRIL-----06	7. APRIL-----05
8. MAY-----09	8. MAY-----03
9. JUNE-----09	9. JUNE-----07
10. JULY-----06	10. JULY-----04
11. AUGUST-----15	11. AUGUST----07
12. <u>SEPTEMBER---06</u>	12. <u>SEPTEMBER-04</u>
TOTAL 72	TOTAL 73

3. The scale below illustrates a total of 50 eye injuries reported for underground mining in 1988, and a total of 28 for 1989, showing a 44% reduction.

Note: A total of 8 months was used in the comparison of 1988 and 1989 (Due to receiving eye injury reports through August 1989 only).

1988	<u>44% REDUCTION</u>	1989
1. JANUARY---05		JANUARY---07
2. FEBRUARY--11		FEBRUARY--02
3. MARCH-----08		MARCH-----05
4. APRIL-----05		APRIL-----02
5. MAY-----03		MAY-----06
6. JUNE-----07		JUNE-----05
7. JULY-----04		JULY-----01
8. <u>AUGUST----07</u>		<u>AUGUST----01</u>
TOTAL 50		TOTAL 28

FINDINGS OF FACT:

4. The information listed below reflects the numbers and percentages of lost time due from eye injuries reported for underground and surface areas of underground mining for the years of 1982 -- 1989.

UNDERGROUND AND SURFACE AREAS OF UNDERGROUND MINING
LOST TIME EYE INJURIES

<u>YEAR</u>	<u>TOTAL</u>	<u>LOST TIME</u>	<u>NO LOST TIME</u>	<u>PERCENT LOST TIME</u>
1982	111	111	0	100%
1983	91	91	0	100%
1984	79	31	48	39.2%
1985	64	29	35	45.3%
1986	39	17	22	43.5%
1987	82	51	31	62.1%
1988	67	45	22	67.1%
1989	28	18	10	64.2

Note: The figures shown in 1989 are eye injury totals for an 8 month period.

FINDINGS OF FACT

5. The total of eye injuries reported for 1982 - 1989 " with the exception of 1987" show a continuous reduction.

6. There was no clear pattern to the injuries reviewed, they occurred in many different ways.

7. The Protection Regulation (Title 36, Series 38, Section 4) was passed in April 1987, and went into affect six months later (October 1987).

8. In accordance with WV Code 22-6-4, a public hearing notice was sent out on June 29, 1989 informing the public that a hearing would be held on August 15, 1989 at the Glade Springs Resort in Danials WV, to receive comments pertaining to the proposed eye protection amendment.

10. On August 15, 1989 a public hearing was held to receive comments regarding the Eye Protection Amendment. A total of thirty-five individuals attended this hearing. A total of fifteen of the thirty-five gave testimony. Eleven of the fifteen testimonies given were in favor of the amendment. A total of four gave comments opposing the amendment.

CONCLUSIONS OF LAW

1. West Virginia Administrative Regulations Title 36, Series 38, Section 4 - Requirements for Approved Eye Protection:

4.1 Within six months of the effective date of these regulations, approved eye protection shall be worn by all persons while in or around a mine, and shall be provided by the operator. Suitable eyeglasses, eyeglasses cleaning materials shall be made available at each mine.

2. West Virginia Code 22A-2-55(e) establishes state standards in regard to requirements for eye and foot protection. 22A-2-55(a) requires that welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other hazards.

3. West Virginia Code 22A-2-55(e) requires that goggles or eyeshields be worn by all persons while being transported in open-type mantrips.

4. 30 CFR 75.1720 establishes federal standards for protective clothing. 75.1720(a) requires in part "face shields or goggles when welding, cutting, or working with molten, or when other hazards to the eyes exist from flying particles be worn."

5. With regard to the proposed amendment to the Eye Protection Regulation Title 36, Series 38, Section 4 - the Board is required by the WV Code 22-6-4C(2) to meet the no less protection rule.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY
TITLE 36 SERIES 38

TITLE: RULES AND REGULATIONS GOVERNING PERSONAL PROTECTIVE
EQUIPMENT

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY
TITLE 36 SERIES 38

TITLE: Rules and Regulations Governing Personal Protective Equipment

General	Section 36.38.1
Scope	1.1
Authority	1.2
Filing Date	1.3
Effective Date	1.4
Definitions	Section 36.38.2
Requirements for Safety-Toed Shoes with Metatarsal Guards	Section 36.38.3
Requirements for Approved Eye Protection	Section 36.38.4
Requirements for Safety Gloves	Section 36.38.5

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY
TITLE 36 SERIES 38

TITLE: Rules and Regulations Governing Personal Protective Equipment

Section 36.38.1 General

1.1 Scope - This administrative rule establishes safety requirements relating to personal protective equipment used in and around coal mining areas.

1.2 Authority - West Virginia Code Chapter 22, Article 6, Section 4.

1.3 Filing Date - These regulations were filed in the office of the Secretary of State, this date November 3, 1989.

1.4 Effective Date - Filed and effective this date, November 3, 1989.

Section 36.38.2 Definitions

2.1 All terms used in this rule, not defined herein, shall have the meanings set forth in Chapter 22A, Article 1, Section 1 of the West Virginia Code.

Section 36.38.3 Requirements for Safety-Toed Shoes with Metatarsal Guards

3.1 Within 12 months of the effective date of these regulations, safety-toed shoes equipped with metatarsal guards shall be worn by all persons while in or around a mine.

-Section 36.38.4 Requirements for Approved Eye Protection


4.1 All employees shall have approved eye protection on their person and use the same where there is a hazard from flying particles, or other eye hazards. Suitable eye protection and cleaning materials shall be made available at each mine site by the operator.

Section 36.38.5 Requirements for Safety Gloves

5.1 Dry leather, cloth, or rubber type gloves, in good condition, shall be worn by all persons removing or attaching a trolley pole to an energized trolley wire.

STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
Board of Coal Mine Health & Safety
Charleston 25311

To: All Persons Interested in Rules and Regulations Constructed by
the Board of Coal Mine Health and Safety

From: Stephen A. Edens, Health and Safety Administrator 

Subj: Title 36, Series 38 - Rules and Regulations Governing Personal
Protective Equipment

Date: July 15, 1989

ACTION: Public Hearing Notice - Title 36, Series 38, Section 4
Requirements for Approved Eye Protection
Final Rule - Title 36, Series 38, Section 5
Requirements for Safety Gloves

Effective Date - (T. 36, S. 38, Section 5 only) - June 29, 1989

AUTHORITY:

The attached proposal to amend Title 36, Series 38, Section 4 - Requirements for Approved Eye Protection, are submitted in accordance with Chapter 22, Article 2A, Section 4 of the West Virginia Code. A public hearing will be held on August 15, 1989, at Glade Springs Resort, Daniels, beginning at 10:00 a.m. to accept comments on the proposed revisions only. Persons wishing to make comments are asked to provide a written copy of your comments to the Administrator at the completion of the public hearing.

Also attached in this regulation is the final language promulgated by the Board, Title 36, Series 38, Section 5 - Requirements for Safety Gloves. This section of the regulations was promulgated in accordance with West Virginia Code 22-2A-4; and the decision of the West Virginia Supreme Court of Appeals in UMWA v. Scott, which held that regulations issued by the Board in response to mining fatalities and major causes of injuries are not subject to the public review and comment provisions of WV Code 22-2A-4.

SUMMARY (T. 36, S. 38, S. 5)

The Board has found that a fatal accident occurred in 1987 in an underground mine involving contact with trolley wire. The West Virginia Department of Energy determined that the fatality occurred when the victim, while operating a track mounted portal bus, accidentally came in contact with an energized trolley wire while attempting to connect the trolley pole.

The Board determined that the factors which contributed to this fatal accident were:

1. The Lee-Norse portal bus involved in the accident was removed from the accident scene and taken to the surface prior to an investigation being conducted.
2. The two portal buses were being realigned to place the portal bus involved in front.
3. The victim was not wearing gloves at the time of the accident.
4. There were no witnesses to the accident.
5. The victim was found slumped over the portal bus with his hand on the trolley wire.
6. It was determined during the investigation that the victim had operated the same type of portal bus prior to the accident.
7. The victim received Annual Refresher Training on February 18 - 19, 1987.

Conclusions of Law

1. West Virginia Code 22A-2-68 requires that: Preservation of the fatal accident scene was not maintained undisturbed in that the Lee-Norse No. 26 Portal bus involved in the accident was brought to the surface of the mine prior to an investigation being conducted.

Therefore, the Board has issued the following, Section 5 of this regulation, to address the hazard of removing or attaching a trolley pole to an energized trolley wire as a result of the fatality.

Posting and Review of the Regulation

1. Post the public hearing notice/regulation for thirty (30) days, immediately upon receipt.
2. Review the regulation with all persons acting in the capacity of underground mine foreman and assistant mine foreman, during the posting period.
3. Review the regulation with all underground employees, during the week following the review with the mine foreman and assistant mine foreman.

Additional Information

Questions and requests for copies of this regulations should be addressed to the following; and should you also need directions to the Glade Springs Resort in Daniels, (Rt. 19 Box D), we will try to provide maps for those requested.

Stephen A. Edens, Administrator
Board of Coal Mine Health and Safety
WV Department of Energy
1615 Washington Street, East
Charleston, West Virginia 25311
(304) 348-3500

SAE:te

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY

TITLE 36 SERIES 38

TITLE: RULES AND REGULATIONS GOVERNING PERSONAL PROTECTIVE
EQUIPMENT

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY
TITLE 36 . SERIES 38

FILED

1988 JUN 29 PM 3:51

TITLE: Rules and Regulations Governing Personal Protective Equipment
SECRETARY OF STATE

Section 36.38.1 General

1.1 Scope - This administrative rule establishes safety requirements relating to personal protective equipment used in and around coal mining areas.

1.2 Authority - West Virginia Code Chapter 22, Article 6, Section 4.

1.3 Filing Date - These regulations were filed in the office of the Secretary of State, this date

1.4 Effective Date - Filed and effective this date,

Section 36.38.2 Definitions

2.1 All terms used in this rule, not defined herein, shall have the meanings set forth in Chapter 22A, Article 1, Section 1 of the West Virginia Code.

Section 36.38.3 Requirements for Safety-Toed Shoes with Metatarsal Guards

3.1 Within 12 months of the effective date of these regulations, safety-toed shoes equipped with metatarsal guards shall be worn by all persons while in or around a mine.

Section 36.38.4 Requirements for Approved Eye Protection

~~4.1 Within six (6) months of the effective date of these regulations, approved eye protection shall be worn by all persons while in or around a mine, and shall be provided by the operator. All employees shall have approved eye protection on their person and use the same where there is a hazard from flying particles, or other eye hazards. Suitable eyeglass cleaning materials shall be made available at each mine site. Suitable eye protection and cleaning materials shall be made available at each mine site by the operator.~~

Section 36.38.5 Requirements for Safety Gloves

5.1 Leather or cloth type gloves, in good condition, shall be worn by all persons removing or attaching a trolley pole to an energized trolley wire.

FILED

1989 NOV -3 PM 12:37

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

November 2, 1989


The Honorable Ken Hechler
Secretary of the State of
West Virginia
State Capitol Complex
Charleston, West Virginia 25305

Dear Secretary Hechler:

Please be advised that in accordance with Chapter 5F-2-2(a)(13) of the West Virginia Code, as amended, which gives me the authority to delegate to administrators such duties of the secretary as the secretary may deem appropriate from time to time to facilitate execution of the powers, authority and duties delegated to the secretary.

I hereby grant such authority to the administrator for the Board of Coal Mine Health and Safety to carry out their duties as required by Chapter 22-6-4 of the West Virginia Code to promulgate rules and regulations and file said regulations with the office of the Secretary of State.

Sincerely,



Leonard H. Harvey, Secretary
Department of Commerce, Labor,
and Environmental Resources

LHH:te

cc: Stephen A. Edens, Health and Safety Administrator
Board of Coal Mine Health and Safety



STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
Board of Coal Mine Health & Safety
Charleston 25311

August 9, 1988

Mr. Rich O. Hartman
Administrative Law Division
Secretary of State's Office
State Capitol Complex
Charleston, West Virginia 25305

Dear Mr. ~~Hartman~~: *Rich*

Please be advised that due to printing delays, we have had to extend the comment period for proposed amendments to existing regulations, Title 36, Series 38, Section 4 - Rules and Regulations Governing Personal Protective Equipment.

The proposed comment period was originally scheduled to end on August 15, 1988, and was extended on July 25 to September 1. Additional printing delays have been incurred, and as a result to allow the 30-day comment period, we are again extending the comment period until September 12, 1988.

I'm terribly sorry for the confusion on this set of regulations, but hopefully this type of problem will be anticipated prior to any future mailings. Enclosed please find the proper form for filing a notice of comment period on a proposed rule.

If additional information is needed, please advise.

Sincerely,

Tina L. Estep

Tina L. Estep
Steno-Secretary I

Enclosure

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY
TITLE 36 SERIES 38

TITLE: RULES AND REGULATIONS GOVERNING PERSONAL PROTECTIVE
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