



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0620; FRL-9958-28-Region 8]

**Approval and Promulgation of Air Quality Implementation Plans; State of Utah;
Revisions to Nonattainment Permitting Regulations**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The EPA is taking final action to conditionally approve all but one of the State Implementation Plan (SIP) revisions submitted by the State of Utah on August 20, 2013, with supporting administrative documentation submitted on September 12, 2013. These submittals revise the Utah Administrative Code (UAC) that pertain to the issuance of Utah air quality permits for major sources in nonattainment areas. The EPA is not taking final action on the portion of the August 20, 2013 submittal that revised rule R307-420 at this time. The EPA is taking final action to conditionally approve the other revisions because, while the submitted revisions to Utah's nonattainment permitting rules do not fully address the deficiencies in the state's program, Utah has committed to address additional remaining deficiencies in the state's nonattainment permitting program no later than a year from the EPA finalizing this conditional approval. Upon the EPA finding of a timely meeting of this commitment in full, the final conditional approval of the SIP revisions would convert to a final approval of Utah's plan. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

DATES: This final rule is effective [**insert date 30 days after date of publication in the Federal Register**].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2016-0620. 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 Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests 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 Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or leone.kevin@epa.gov.

I. Background

On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah sent the EPA revisions to their nonattainment permitting regulations, specifically to address deficiencies the EPA identified in their nonattainment permitting regulations that affected the EPA's ability to approve Utah's PM₁₀ maintenance plan and that may affect the EPA's ability to approve Utah's PM_{2.5} SIP. These revisions addressed R307-403-1

(Purpose and Definitions), R307-403-2 (Applicability), R307-403-11 (Actual Plant-wide Applicability Limits (PALs)), and R307-420 (Ozone Offset Requirements in Davis and Salt Lake Counties). In addition, Utah moved R307-401-19 (Analysis of Alternatives) to R307-403-10 and moved R307-401-20 (Relaxation of Limits) to R307-403-2. On June 2, 2016, the EPA entered into a consent decree with the Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air regarding a failure to act, pursuant to CAA sections 110(k)(2)-(4), on certain complete SIP submissions from states intended to address specific requirements related to the 2006 PM_{2.5} national ambient air quality standard (NAAQS) for certain nonattainment areas, including the submittal from the Governor of Utah dated August 20, 2013.

The SIP revisions submitted by the Utah Department of Air Quality (UDAQ) on August 20, 2013, establish specific nonattainment new source review (NNSR) permitting requirements. In this revision, the UDAQ has incorporated federal regulatory language – establishing permitting requirements for new and modified major stationary sources in a nonattainment area – from portions of 40 CFR 51.165 and reformatted it into state-specific requirements for sources in Utah under R307-403-1 (Purpose and Definitions) and R307-403-2 (Applicability), including provisions relevant to NNSR programs for PM_{2.5} nonattainment areas. Additionally, UDAQ incorporated by reference the provisions of 40 CFR 51.165(f)(1) – (f)(14) into 307-403-11 (Actual PALs), and revised R307-420 to state that the definitions and applicability provisions in R307-403-1 apply to this section.

CAA section 110(a)(2)(C) requires each state plan to include “a program to provide for...regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit

program as required in parts C and D of this subchapter,” and CAA section 172(c)(5) provides that the plan “shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].” CAA section 173 lays out the requirements for obtaining a permit that must be included in a state’s SIP-approved permit program. CAA section 110(a)(2)(A) requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. CAA section 110(i) (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. CAA section 172(c)(7) requires that nonattainment plans, including NNSR programs required by section 172(c)(5), meet the applicable provisions of section 110(a)(2), including the requirement in section 110(a)(2)(A) for enforceable emission limitations and other control measures. CAA section 110(l) provides that the EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act.

Section 51.165 in title 40 of the CFR (Permit Requirements) sets out the minimum plan requirements states are to meet within each SIP NNSR permitting program. Generally, 40 CFR 51.165 consists of a set of definitions, minimum plan requirements regarding procedures for determining applicability of NNSR and use of offsets, and minimum plan requirements regarding other source obligations, such as recordkeeping.

Specifically, subparagraphs 51.165(a)(1)(i) through (xlvi) enumerate a set of definitions which states must either use or replace with definitions that a state demonstrates are more stringent or at least as stringent in all respects. Subparagraph 51.165(a)(2) sets minimum plan

requirements for procedures to determine the applicability of the NNSR program to new and modified sources. Subparagraph 51.165(a)(3), (a)(9) and (a)(11) set minimum plan requirements for the use of offsets by sources subject to NNSR requirements. Subparagraphs (a)(8) and (a)(10) regard precursors, and subparagraphs (a)(6) and (a)(7) regard recordkeeping obligations. Subparagraph 51.165(a)(4) allows NNSR programs to treat fugitive emissions in certain ways. Subparagraph 51.165(a)(5) regards enforceable procedures for after approval to construct has been granted. Subparagraph 51.165(b) sets minimum plan requirements for new major stationary sources and major modifications in attainment and unclassifiable areas that would cause or contribute to violations of the NAAQS. Finally, subparagraph 51.165(f) sets minimum plan requirements for the use of PALs. Please refer to docket EPA-R08-OAR-2016-0620 to view a cross-walk table which outlines how Utah's nonattainment permitting rules correlate with the requirements of 40 CFR 51.165.

Clean Air Act section 189(e) requires that state SIPs apply the same control requirements that apply to major stationary sources of PM₁₀ to major stationary sources of PM₁₀ precursors, "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), issued a decision that remanded the EPA's 2008 PM_{2.5} NSR Implementation Rule (73 FR 28321). The court found that the EPA erred in implementing the PM_{2.5} NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. In particular, subpart 4 includes

section 189(e) of the CAA, which requires the control of major stationary sources of PM₁₀ precursors (and hence under the court decision, PM_{2.5} precursors) “except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area.” Accordingly, NNSR programs that are submitted for PM_{2.5} nonattainment areas must regulate all PM_{2.5} precursors, i.e., sulfur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds (VOC), and ammonia, unless the Administrator determines that such sources of a particular precursor do not contribute significantly to nonattainment in the nonattainment area. The EPA recently finalized a new provision at 40 CFR 51.165(a)(13) that codifies this requirement, as it applies to PM_{2.5}, in the federal regulations.

As a result of this court decision, Utah needed to submit further revisions to address remaining deficiencies in the nonattainment permitting program in order for the EPA to approve the August 20, 2013, submittal. Included as part of those deficiencies was that Utah has not submitted an analysis demonstrating that sources of ammonia, as a PM_{2.5} precursor, do not contribute significantly to PM_{2.5} levels that exceed the NAAQS in nonattainment areas in the State. On September 30, 2016, Utah submitted to the EPA a commitment letter (see docket EPA-R08-OAR-2016-0620) in which Utah commits to address additional remaining deficiencies in the State’s nonattainment permitting program in R307-403 by December 8, 2017, that were not addressed in the August 20, 2013, submittal, including revisions to R307-403-2, R307-403-3, and R307-403-4. In Utah’s commitment letter, Utah specifies that:

1. UDAQ commits to submit a SIP revision that either regulates major stationary sources pursuant to Utah’s NNSR permitting program, consistent with all applicable federal regulatory requirements or demonstrates that sources of ammonia, as a PM_{2.5}

precursor, do not contribute significantly to PM_{2.5} levels that exceed the NAAQS in nonattainment areas in the state, consistent with new provisions at 40 CFR

51.1006(a)(3);

2. UDAQ commits to revise R307-403-2 consistent with the new definitions in 40 CFR 51.165 that the EPA recently finalized in the PM_{2.5} SIP Requirements Rules;
3. UDAQ commits to revise R307-403-3, including R307-403-3(3), to remove the reference to NNSR determinations being made “at the time of the source’s proposed start-up date”;
4. UDAQ commits to revise R307-403-3, including R307-403-3(2) and R307-403-3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;
5. UDAQ commits to revise R307-403-3, in addition to the previously adopted definition of lowest achievable emission rate (LAER) in R307-403-1, to explicitly state that LAER applies to all major new sources and major modifications for the relevant pollutants in nonattainment areas;
6. UDAQ commits to revise R307-403-4 to incorporate the requirements from 40 CFR 51.165 to establish that all general offset permitting requirements apply for all offsets regardless of the pollutant at issue, and to revise the provision to impose immediate and direct general offset permitting requirements on all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;

7. UDAQ commits to work with the Utah Air Quality Board to revise R307-403-4 to reference the criteria discussed in section IV.D. of 40 CFR 51, Appendix S; and
8. UDAQ will update R307-403 to include a new section that imposes requirements that address emission offsets for PM_{2.5} nonattainment areas (as required in 40 CFR 51.165(a)(11)) on NNSR sources in Utah. UDAQ will revise R307-403-3, including R307-403-3(3)(c), to cross reference this new section, as well as the requirements in R307-403-4, R307-403-5, and R307-403-6; and UDAQ commits to work with the Utah Air Quality Board to revise this section to include the requirements of CAA Section 173(c)(1) and 40 CFR 51.165 (specifically 40 CFR 51.165(a)(3)) concerning the requirement that creditable reductions be calculated based on actual emissions for offset purposes.

Under CAA section 110(k)(4), the EPA may approve a SIP revision based on a commitment by the state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. Under a conditional approval, the state must adopt and submit the specific revisions it has committed to within one year of the EPA's finalization. If the EPA fully approves the submittal of the revisions specified in the commitment letter, the conditional nature of the approval would be removed and the submittal would become fully approved. If the state does not submit these revisions within one year, or if the EPA finds the state's revisions to be incomplete, or the EPA disapproves the state's revisions, a conditional approval will convert to a disapproval. If any of these occur and the EPA's conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which

starts an 18-month clock for sanctions, see section 179(a)(2), and a two-year clock for a federal implementation plan (FIP), see section 110(c)(1)(B).

II. What are the Changes that EPA is Taking Final Action to Approve?

As proposed in our October 31, 2016 proposed action (81 FR 75361), we are finalizing conditional approval of the following revisions to the UAC: R307-403-1 (Purpose and Definitions); R307-403-2 (Applicability); R307-403-11 (Actual PALs); and the relocation of R307-401-19 (Analysis of Alternatives), which was originally approved in 79 FR 7072 on February 6, 2014, to R307-403-10 and R307-401-20 (Relaxation of Limits) to R307-403-2, which was originally approved in 79 FR 7072 on February 6, 2014.

In our October 31, 2016 proposed rulemaking (see 81 FR 75361), we proposed to approve R307-420 (Ozone Offset Requirements in Davis and Salt Lake Counties.) In that rulemaking, we stated: “This rule is being revised to include the definitions and applicability provisions of R307-403-1. This rule change will ensure that the definitions and applicability provisions in R307-420 are consistent with related permitting rules in R307-403.” However, we are not taking final action at this time on the revisions to R307-420, as submitted by Utah on August 20, 2013. Merely approving the phrase “Except as provided in R307-420-2, the definitions in R307-403-1 apply to R307-420” in R307-420-2 (Definitions), and the phrase “The applicability provisions in R307-403-2(1)(a) through (f) and R307-403-2(2) through (7) apply in R307-420” in R307-420-3(3) (Applicability) would not meet the requirements of CAA section 110(a)(2)(A), which requires that SIPs contain enforceable emissions limitations and other control measures. The EPA has determined that it should not take action on these revisions because the rest of R307-420 is not a part of Utah’s federally enforceable SIP, and approving it

into the SIP would create confusion for the regulatory authorities, the sources and the public. However, once Utah does submit a fully approvable revision incorporating all of R307-420, the EPA will be able to undertake future rulemaking action on this section at that time.

The EPA has determined that these final revisions, when combined with the changes in Utah's September 30, 2016 commitment letter, create enforceable obligations for sources and are consistent with the CAA and EPA regulations, including the requirements of CAA section 110(a)(2)(A), 110(a)(2)(C), 110(i), 110(l), 172(c)(5), 172(c)(7), 173. While the August 20, 2013, submittal states that ammonia is not a precursor to $PM_{2.5}$,¹ and UDAQ has not submitted an analysis demonstrating that sources of ammonia, as a $PM_{2.5}$ precursor, do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the State, UDAQ committed to submit a SIP revision that either 1) regulates major stationary sources of ammonia pursuant to Utah's NNSR permitting program, consistent with all applicable federal regulatory requirements, or 2) demonstrates that sources of ammonia, as a $PM_{2.5}$ precursor, do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the State, consistent with new provisions at 40 CFR 51.1006(a)(3). Therefore, we are conditionally approving the submittal's $PM_{2.5}$ precursor provisions.

Utah also committed to address additional remaining deficiencies in the State's nonattainment permitting program in R307-403 by December 8, 2017, that were not addressed in the August 20, 2013, submittal, including revisions to R307-403-2, R307-403-3, and R307-403-4. Therefore, the EPA's final conditional approval of these revisions allows Utah to apply R307-403 as permitting authority in all nonattainment areas for $PM_{2.5}$, PM_{10} , and SO_2 as well as

¹ R307-403-1(4)(b) states that "ammonia is not a precursor to $PM_{2.5}$ in the Logan, Salt Lake City, and Provo $PM_{2.5}$ nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345,"

maintenance areas for ozone and CO for new major sources and major modifications.

We provided a detailed explanation of the basis of our proposed conditional approval in our proposed rulemaking (see 81 FR 75361). We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on November 30, 2016.

III. Response to Comments

Comment: We received one (1) comment from Caitlin Whittaker. The commenter stated the importance of addressing emission offsets in Utah's SIP, and that it is important for the air quality in Utah.

Response: The EPA agrees with the commenter that emissions offset programs for nonattainment areas are an important component for improving air quality, and we acknowledge the Utah Department of Environmental Quality's work with the EPA to improve their air quality regulations, particularly with concern to their nonattainment area rules.

IV. What Action is EPA Taking Today?

The EPA is taking final action to conditionally approve Utah's August 20, 2013, submittal. As discussed in our proposal and this notice, our action is based on an evaluation of Utah's rules against the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(A), 110(i), 110(l), 172(c)(5), 172(c)(7), 173, and regulations at 40 CFR 51.165.

As described in our proposed rulemaking, and in Section II of this notice, the EPA is conditionally approving the revisions of R307-403-1 (Purpose and Definitions), R307-403-2 (Applicability), R307-403-11 (Actual PALs), and the relocation of R307-401-19 (Analysis of Alternatives) to R307-403-10 and R307-401-20 (Relaxation of Limits) to R307-403-2. We are also determining that if the commitments outlined in Utah's September 30, 2016 commitment

letter (see docket EPA-R08-OAR-2016-0620) are met, those revisions combined with the August 20, 2013, submittal would address the deficiencies in Utah's nonattainment permitting program, as identified by the EPA in our proposed rulemaking for this action.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the UDAQ rules as described in the amendments to 40 CFR part 52 set forth in this document. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.² 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 Orders Review

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements

² 62 Fed. Reg. 27968 (May 22, 1997).

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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 in 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 (Public Law 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 Clean Air Act; 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).

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 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).

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 will submit a report containing this action 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 the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 27, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

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

Subpart TT-Utah

2. In §52.2320, the table in paragraph (c) is amended by:

- a. Removing, under the center heading “R307-401. Permit: New and Modified Sources,” the entries “R307-401-19” and “R307-401-20.”
- b. Revising, under the center heading “R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas,” the entry “R307-403.”
- c. Adding, under the center heading “R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas,” the entries “R307-403-1,” “R307-403-2,” “R307-403-10,” and “R307-403-11” in numerical order.

The additions and revision read as follows:

§52.2320 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
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R307-403 Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas				
R307-403	Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas	9/15/1998	71 FR 7679, 2/14/06	Except for R307-403-1, R307-403-2, R307-403-10, R307-403-11.
R307-403-1	Purpose and Definitions	7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	Conditionally approved through [insert date one year after the date of publication in the Federal Register]
R307-403-2	Applicability	7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	Conditionally approved through [insert date one year after the date of publication in the Federal Register]

R307-403-10	Analysis of Alternatives	7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	Conditionally approved through [insert date one year after the date of publication in the Federal Register]
R307-403-11	Actuals PALS	7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	Conditionally approved through [insert date one year after the date of publication in the Federal Register]
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