

Union Calendar No. 221

110TH CONGRESS
1ST SESSION

H. R. 1680

[Report No. 110-357]

To authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2007

Mr. THOMPSON of Mississippi (for himself, Mr. KING of New York, Mr. LANGEVIN, Mr. McCAUL of Texas, Mr. ETHERIDGE, Mr. DENT, Ms. LORETTA SANCHEZ of California, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Homeland Security

OCTOBER 2, 2007

Additional sponsors: Ms. ZOE LOFGREN of California and Mr. AL GREEN of Texas

OCTOBER 2, 2007

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on March 26, 2007]

A BILL

To authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Secure Handling of Am-*
5 *monium Nitrate Act of 2007”.*

6 **SEC. 2. SECURE HANDLING OF AMMONIUM NITRATE.**

7 *(a) IN GENERAL.—Title VIII of the Homeland Secu-*
8 *rity Act of 2002 (6 U.S.C. 361 et seq.) is amended by add-*
9 *ing at the end the following new subtitle:*

10 **“Subtitle J—Secure Handling of**
11 **Ammonium Nitrate**

12 **“SEC. 899A. DEFINITIONS.**

13 *“In this subtitle, the following definitions apply:*

14 *“(1) The term ‘ammonium nitrate’ means—*

15 *“(A) solid ammonium nitrate that is chiefly*
16 *the ammonium salt of nitric acid and contains*
17 *not less than 33 percent nitrogen by weight; and*

18 *“(B) any mixture containing a percentage*
19 *of ammonium nitrate that is equal to or greater*
20 *than the percentage determined by the Secretary*
21 *under section 899B(b).*

22 *“(2) The term ‘ammonium nitrate facility’*
23 *means any entity that produces, sells, or otherwise*
24 *transfers ownership of, or provides application serv-*
25 *ices for, ammonium nitrate.*

1 “(3) *The term ‘ammonium nitrate purchaser’*
2 *means any person who buys and takes possession of*
3 *ammonium nitrate from an ammonium nitrate facil-*
4 *ity.*

5 **“SEC. 899B. REGULATION OF THE SALE AND TRANSFER OF**
6 **AMMONIUM NITRATE.**

7 “(a) *IN GENERAL.—The Secretary shall regulate the*
8 *sale and transfer of ammonium nitrate by an ammonium*
9 *nitrate facility in accordance with this subtitle to prevent*
10 *the misappropriation or use of ammonium nitrate in an*
11 *act of terrorism.*

12 “(b) *AMMONIUM NITRATE MIXTURES.—The Secretary,*
13 *in consultation with the heads of appropriate Federal de-*
14 *partments and agencies, including the Secretary of Agri-*
15 *culture, shall, through notice and comment and by no later*
16 *than 90 days after the date of the enactment of this subtitle,*
17 *establish a threshold percentage for ammonium nitrate in*
18 *a substance. If a substance contains a percentage of ammo-*
19 *nium nitrate that is equal to or greater than the percentage*
20 *established by the Secretary, the substance shall be treated*
21 *as ammonium nitrate for the purposes of this subtitle.*

22 “(c) *REGISTRATION OF OWNERS OF AMMONIUM NI-*
23 *TRATE FACILITIES.—*

24 “(1) *REGISTRATION.—The Secretary shall estab-*
25 *lish a process by which—*

1 “(A) any person who is the owner of an
2 ammonium nitrate facility is required to register
3 with the Department; and

4 “(B) upon such registration, such person is
5 issued a registration number for purposes of this
6 subtitle.

7 “(2) *REGISTRATION INFORMATION.*—The Sec-
8 retary shall require that each applicant for registra-
9 tion as the owner of an ammonium nitrate facility
10 must submit to the Secretary—

11 “(A) the name, address, and telephone num-
12 ber of each ammonium nitrate facility owned by
13 the applicant;

14 “(B) the name of the person designated by
15 the owner of the ammonium nitrate facility as
16 the point of contact of such facility, for purposes
17 of this subtitle;

18 “(C) for each such facility, the amount of
19 ammonium nitrate that is sold or transferred
20 during each year; and

21 “(D) such other information as the Sec-
22 retary may determine is appropriate.

23 “(d) *REGISTRATION OF AMMONIUM NITRATE PUR-*
24 *CHASERS.*—

1 “(1) *REGISTRATION.*—*The Secretary shall estab-*
2 *lish a process by which—*

3 “(A) *any person who seeks to be an ammo-*
4 *onium nitrate purchaser is required to register*
5 *with the Department; and*

6 “(B) *upon such registration, such person is*
7 *issued a registration number for purposes of this*
8 *subtitle.*

9 “(2) *REGISTRATION INFORMATION.*—*The Sec-*
10 *retary shall require that each applicant for registra-*
11 *tion under this subsection as a prospective ammo-*
12 *onium nitrate purchaser must submit to the Secretary*
13 *the name, address, and telephone number of the appli-*
14 *cant and the intended use of ammonium nitrate to be*
15 *purchased by the applicant.*

16 “(e) *RECORDS.*—

17 “(1) *MAINTENANCE OF RECORDS.*—*The Sec-*
18 *retary shall require the owner of an ammonium ni-*
19 *trate facility engaged in selling or transferring am-*
20 *monium nitrate to—*

21 “(A) *maintain a record of each sale or*
22 *transfer of ammonium nitrate, during the two-*
23 *year period beginning on the date of such sale or*
24 *transfer; and*

1 “(B) include in such record the information
2 described in paragraph (2).

3 “(2) *SPECIFIC INFORMATION REQUIRED.*—For
4 each such sale or transfer, the Secretary shall require
5 the owner of an ammonium nitrate facility to—

6 “(A) record the name, address, telephone
7 number, and registration number issued under
8 subsection (c) or (d) of each person that takes
9 possession of ammonium nitrate from the owner
10 of an ammonium nitrate facility, in a manner
11 prescribed by the Secretary;

12 “(B) if applicable, record the name, address,
13 and telephone number of each individual who
14 takes possession of the ammonium nitrate on be-
15 half of the person referred to in subparagraph
16 (A), at the point of sale;

17 “(C) record the date and quantity of ammo-
18 nium nitrate sold or transferred; and

19 “(D) verify the identity of the persons re-
20 ferred to in subparagraphs (A) and (B), as ap-
21 plicable, in accordance with a procedure estab-
22 lished by the Secretary.

23 “(3) *PROTECTION OF INFORMATION.*—In main-
24 taining records in accordance with paragraph (1), the
25 owner of an ammonium nitrate facility shall take

1 *reasonable actions to ensure the protection of the in-*
2 *formation included in such records.*

3 “(f) *EXEMPTION FOR EXPLOSIVE PURPOSES.*—*The*
4 *Secretary may exempt from this subtitle a person pro-*
5 *ducing, selling, or purchasing ammonium nitrate exclu-*
6 *sively for use as an explosive material under a license*
7 *issued under chapter 40 of title 18, United States Code.*

8 “(g) *CONSULTATION.*—*In carrying out this section, the*
9 *Secretary shall consult with the Secretary of Agriculture,*
10 *States, and appropriate private sector entities, to ensure*
11 *that the access of agricultural producers to ammonium ni-*
12 *trate is not unduly burdened.*

13 “(h) *DATA CONFIDENTIALITY.*—

14 “(1) *IN GENERAL.*—*Notwithstanding section 552*
15 *of title 5, United States Code, or the USA PATRIOT*
16 *ACT (Public Law 107–56; 115 Stat. 272), and except*
17 *as provided in paragraph (2), the Secretary may not*
18 *disclose to any person any information obtained*
19 *under this subtitle.*

20 “(2) *EXCEPTION.*—*The Secretary may disclose*
21 *any information obtained by the Secretary under this*
22 *subtitle to an officer or employee of the United States,*
23 *or a person that has entered into a contract with the*
24 *United States, who has a need to know the informa-*
25 *tion to perform the duties of the officer, employee, or*

1 *person, or to a State agency pursuant to section*
2 *899D, under appropriate arrangements to ensure the*
3 *protection of the information.*

4 “(i) *REGISTRATION PROCEDURES AND CHECK OF*
5 *TERRORIST WATCH LIST.—*

6 “(1) *REGISTRATION PROCEDURES.—*

7 “(A) *GENERALLY.—The Secretary shall es-*
8 *tablish procedures to efficiently receive applica-*
9 *tions for registration numbers under this sub-*
10 *title, conduct the checks required under para-*
11 *graph (2), and promptly issue or deny a reg-*
12 *istration number.*

13 “(B) *INITIAL SIX-MONTH REGISTRATION PE-*
14 *RIOD.—The Secretary shall take steps to maxi-*
15 *mize the number of registration applications that*
16 *are submitted and processed during the six-*
17 *month period provided for in section 899F(e).*

18 “(2) *CHECK OF TERRORIST WATCH LIST.—*

19 “(A) *CHECK REQUIRED.—The Secretary*
20 *shall conduct a check of appropriate identifying*
21 *information of any person seeking to register*
22 *with the Department under subsection (c) or (d)*
23 *against identifying information that appears on*
24 *the terrorist watch list.*

1 “(B) *AUTHORITY TO DENY REGISTRATION*
2 *NUMBER.—If the person’s identifying informa-*
3 *tion appears on the terrorist watch list and the*
4 *Secretary determines such person may pose a*
5 *threat to national security, the Secretary may*
6 *deny issuance of a registration number under*
7 *this subtitle.*

8 “(3) *EXPEDITED REVIEW OF APPLICATIONS.—*

9 “(A) *IN GENERAL.—Following the six-*
10 *month period provided for in section 899F(e),*
11 *the Secretary shall, to the extent practicable,*
12 *issue or deny registration numbers under this*
13 *subtitle not later than 72 hours after the time the*
14 *Secretary receives a complete registration appli-*
15 *cation, unless the Secretary determines, in the*
16 *interest of national security, that additional*
17 *time is necessary to review an application.*

18 “(B) *NOTICE OF APPLICATION STATUS.—In*
19 *all cases, the Secretary shall notify persons of the*
20 *status of their application not later than 72*
21 *hours after the time the Secretary receives a com-*
22 *plete registration application.*

23 “(4) *EXPEDITED APPEALS PROCESS.—*

24 “(A) *REQUIREMENT.—*

1 “(i) *APPEALS PROCESS.—The Sec-*
2 *retary shall establish an expedited appeals*
3 *process for persons denied a registration*
4 *number under this subtitle.*

5 “(ii) *TIME PERIOD FOR RESOLU-*
6 *TION.—The Secretary shall, to the extent*
7 *practicable, resolve appeals not later than*
8 *72 hours after receiving a complete request*
9 *for appeal unless the Secretary determines,*
10 *in the interest of national security, that ad-*
11 *ditional time is necessary to resolve an ap-*
12 *peal.*

13 “(B) *CONSULTATION.—The Secretary, in*
14 *developing the appeals process under subpara-*
15 *graph (A), shall consult with appropriate stake-*
16 *holders.*

17 “(C) *GUIDANCE.—The Secretary shall pro-*
18 *vide guidance regarding the procedures and in-*
19 *formation required for an appeal under subpara-*
20 *graph (A) to persons denied registration numbers*
21 *under this subtitle.*

22 “(5) *RESTRICTIONS ON USE AND MAINTENANCE*
23 *OF INFORMATION.—*

1 “(A) *IN GENERAL.*—*Information obtained*
2 *by the Secretary under this section may not be*
3 *made available to the public.*

4 “(B) *USE OF CERTAIN INFORMATION.*—*Any*
5 *information constituting grounds for denial of a*
6 *registration number under this section shall be*
7 *maintained confidentially by the Secretary and*
8 *may be used only for making determinations*
9 *under this section. Notwithstanding any other*
10 *provision of this subtitle, the Secretary may*
11 *share any such information with Federal, State,*
12 *local, and tribal law enforcement agencies, as*
13 *appropriate.*

14 “(6) *REGISTRATION INFORMATION.*—

15 “(A) *AUTHORITY TO REQUIRE INFORMA-*
16 *TION.*—*The Secretary may require a person ap-*
17 *plying for a registration number under this sub-*
18 *title to submit such information as may be nec-*
19 *essary to carry out the requirements of this sec-*
20 *tion.*

21 “(B) *REQUIREMENT TO UPDATE INFORMA-*
22 *TION.*—*The Secretary may require persons issued*
23 *a registration under this subtitle to update reg-*
24 *istration information submitted to the Secretary*
25 *under this subtitle, as appropriate.*

1 “(7) *RE-CHECKS AGAINST TERRORIST WATCH*
2 *LIST.*—

3 “(A) *RE-CHECKS.*—*The Secretary shall, as*
4 *appropriate, re-check persons provided a reg-*
5 *istration number pursuant to this subtitle*
6 *against the terrorist watch list, and may revoke*
7 *such registration number if the Secretary deter-*
8 *mines such person may pose a threat to national*
9 *security.*

10 “(B) *NOTICE OF REVOCATION.*—*The Sec-*
11 *retary shall, as appropriate, provide prior notice*
12 *to a person whose registration number is revoked*
13 *under this section and such person shall have an*
14 *opportunity to appeal, as provided in paragraph*
15 *(4).*

16 **“SEC. 899C. INSPECTION AND AUDITING OF RECORDS.**

17 *“The Secretary shall establish a process for the peri-*
18 *odic inspection and auditing of the records maintained by*
19 *owners of ammonium nitrate facilities for the purpose of*
20 *monitoring compliance with such section or for the purpose*
21 *of deterring or preventing the misappropriation or use of*
22 *ammonium nitrate in an act of terrorism.*

23 **“SEC. 899D. ADMINISTRATIVE PROVISIONS.**

24 “(a) *COOPERATIVE AGREEMENTS.*—*The Secretary—*

1 “(1) *may enter into a cooperative agreement*
2 *with the Secretary of Agriculture, or the head of any*
3 *State department of agriculture or its designee in-*
4 *olved in agricultural regulation, in consultation*
5 *with the State agency responsible for homeland secu-*
6 *rity, to carry out the provisions of this subtitle; and*

7 “(2) *wherever possible, shall seek to cooperate*
8 *with State agencies or their designees that oversee am-*
9 *monium nitrate facility operations when seeking co-*
10 *operative agreements to implement the registration*
11 *and enforcement provisions of this subtitle.*

12 “(b) *DELEGATION.—*

13 “(1) *AUTHORITY.—The Secretary may delegate*
14 *to a State the authority to assist the Secretary in the*
15 *administration and enforcement of this subtitle.*

16 “(2) *DELEGATION REQUIRED.—At the request of*
17 *a Governor of a State, the Secretary shall delegate to*
18 *the State the authority to carry out functions under*
19 *sections 899B and 899C, if the Secretary determines*
20 *that the State is capable of satisfactorily carrying out*
21 *such functions.*

22 “(3) *FUNDING.—Subject to the availability of*
23 *appropriations, if the Secretary enters into an agree-*
24 *ment with a State under this subsection to delegate*
25 *functions to the State, the Secretary shall provide to*

1 *the State sufficient funds to carry out the delegated*
2 *functions.*

3 “(c) *PROVISION OF GUIDANCE AND NOTIFICATION MA-*
4 *TERIALS TO AMMONIUM NITRATE FACILITIES.—*

5 “(1) *GUIDANCE.—The Secretary shall make*
6 *available to each owner of an ammonium nitrate fa-*
7 *cility registered under section 899B(c)(1) guidance*
8 *on—*

9 “(A) *the identification of suspicious ammo-*
10 *onium nitrate purchases or transfers or attempted*
11 *purchases or transfers;*

12 “(B) *the appropriate course of action to be*
13 *taken by the ammonium nitrate facility owner*
14 *with respect to such a purchase or transfer or at-*
15 *tempted purchase or transfer, including—*

16 “(i) *exercising the right of the owner of*
17 *the ammonium nitrate facility to decline*
18 *sale of ammonium nitrate; and*

19 “(ii) *notifying appropriate law en-*
20 *forcement entities; and*

21 “(C) *any such additional subjects as the*
22 *Secretary determines are appropriate to prevent*
23 *the misappropriation or use of ammonium ni-*
24 *trate in an act of terrorism.*

1 “(2) *USE OF MATERIALS AND PROGRAMS.*—*In*
2 *providing guidance under this subsection, the Sec-*
3 *retary shall, to the extent practicable, leverage any*
4 *relevant materials and programs.*

5 “(3) *NOTIFICATION MATERIALS.*—

6 “(A) *IN GENERAL.*—*The Secretary shall*
7 *make available materials suitable for posting at*
8 *ammonium nitrate facilities where ammonium*
9 *nitrate is sold.*

10 “(B) *DESIGN OF MATERIALS.*—*Such mate-*
11 *rials shall be designed to notify prospective am-*
12 *monium nitrate purchasers of—*

13 “(i) *the record-keeping requirements*
14 *under section 899B; and*

15 “(ii) *the penalties for violating such*
16 *requirements.*

17 **“SEC. 899E. THEFT REPORTING REQUIREMENT.**

18 *“Any person who is required to comply with section*
19 *899B(e) who has knowledge of the theft or unexplained loss*
20 *of ammonium nitrate shall report such theft or loss to the*
21 *appropriate Federal law enforcement authorities within one*
22 *calendar day of the date on which the person becomes aware*
23 *of such theft or loss. Upon receipt of such report, the rel-*
24 *evant Federal authorities shall inform State, local, and*
25 *tribal law enforcement entities as appropriate.*

1 **“SEC. 899F. PROHIBITIONS AND PENALTY.**

2 “(a) *PROHIBITIONS.*—

3 “(1) *TAKING POSSESSION.*—*No person shall take*
4 *possession of ammonium nitrate from an ammonium*
5 *nitrate facility unless such person is registered under*
6 *subsection (c) or (d) of section 899B, or is an agent*
7 *of a person registered under subsection (c) or (d) of*
8 *that section.*

9 “(2) *TRANSFERRING POSSESSION.*—*An owner of*
10 *an ammonium nitrate facility shall not transfer pos-*
11 *session of ammonium nitrate from the ammonium ni-*
12 *trate facility to any person who is not registered*
13 *under subsection (c) or (d) of section 899B, unless*
14 *such person is an agent of a person registered under*
15 *subsection (c) or (d) of that section.*

16 “(3) *OTHER PROHIBITIONS.*—*No person shall—*

17 “(A) *buy and take possession of ammonium*
18 *nitrate without a registration number required*
19 *under subsection (c) or (d) of section 899B;*

20 “(B) *own or operate an ammonium nitrate*
21 *facility without a registration number required*
22 *under section 899B(c); or*

23 “(C) *fail to comply with any requirement*
24 *or violate any other prohibition under this sub-*
25 *title.*

26 “(b) *PROHIBITIONS.*—*No person shall—*

1 “(1) buy and take possession of ammonium ni-
2 trate without a registration number required under
3 subsection (c) or (d) of section 899B;

4 “(2) own or operate an ammonium nitrate facil-
5 ity without a registration number required under sec-
6 tion 899B(c); or

7 “(3) fail to comply with any requirement or vio-
8 late any other prohibition under this subtitle.

9 “(c) *CIVIL PENALTY.*—A person that violates this sub-
10 title may be assessed a civil penalty by the Secretary of
11 not more than \$50,000 per violation.

12 “(d) *PENALTY CONSIDERATIONS.*—In determining the
13 amount of a civil penalty under this section, the Secretary
14 shall consider—

15 “(1) the nature and circumstances of the viola-
16 tion;

17 “(2) with respect to the person who commits the
18 violation, any history of prior violations, the ability
19 to pay the penalty, and any effect the penalty is like-
20 ly to have on the ability of such person to do business;
21 and

22 “(3) any other matter that the Secretary deter-
23 mines that justice requires.

24 “(e) *NOTICE AND OPPORTUNITY FOR A HEARING.*—No
25 civil penalty may be assessed under this subtitle unless the

1 *person liable for the penalty has been given notice and an*
2 *opportunity for a hearing on the violation for which the*
3 *penalty is to be assessed in the county, parish, or incor-*
4 *porated city of residence of that person.*

5 “(f) *DELAY IN APPLICATION OF PROHIBITION.*—Para-
6 *graphs (1) and (2) of subsection (a) shall apply beginning*
7 *6 months after the issuance by the Secretary of a final rule*
8 *implementing this subtitle.*

9 “**SEC. 899G. PROTECTION FROM CIVIL LIABILITY.**

10 “(a) *IN GENERAL.*—Notwithstanding any other provi-
11 *sion of law, an owner of an ammonium nitrate facility who*
12 *in good faith refuses to sell or transfer ammonium nitrate*
13 *to any person, or who in good faith discloses to the Depart-*
14 *ment or to appropriate law enforcement authorities an ac-*
15 *tual or attempted purchase or transfer, based upon a rea-*
16 *sonable belief that the person seeking purchase or transfer*
17 *of ammonium nitrate may use the ammonium nitrate to*
18 *create an explosive device to be employed in an act of ter-*
19 *rorism (as defined in section 3077 of title 18, United States*
20 *Code), or to use ammonium nitrate for any other unlawful*
21 *purpose, shall be immune from civil liability arising from*
22 *that refusal to sell ammonium nitrate or from making that*
23 *disclosure.*

1 “(b) *LIMITATION.*—*Subsection (a) shall not be con-*
2 *strued to apply with respect to any refusal to sell or disclo-*
3 *sure—*

4 “(1) *that violates—*

5 “(A) *title VII of the Civil Rights Act of*
6 *1964 (42 U.S.C. 2000e et seq); or*

7 “(B) *the Americans with Disabilities Act of*
8 *1990 (42 U.S.C. 12101 et seq.); or*

9 “(2) *made on the basis that the person seeking*
10 *purchase or transfer of ammonium nitrate is a vet-*
11 *eran or member of the armed forces of the United*
12 *States.*

13 **“SEC. 899H. PREEMPTION OF OTHER LAWS.**

14 “(a) *OTHER FEDERAL REGULATIONS.*—*Except as pro-*
15 *vided in section 899G, nothing in this subtitle affects any*
16 *regulation issued by any agency other than an agency of*
17 *the Department.*

18 “(b) *STATE LAW.*—*Subject to section 899G, this sub-*
19 *title preempts the laws of any State to the extent that such*
20 *laws are inconsistent with this subtitle, except that this sub-*
21 *title shall not preempt any State law that provides addi-*
22 *tional protection against the acquisition of ammonium ni-*
23 *trate by terrorists or the use of ammonium nitrate in explo-*
24 *sives in acts of terrorism or for other illicit purposes, as*
25 *determined by the Secretary.*

1 **“SEC. 899I. DEADLINES FOR REGULATIONS.**

2 *“The Secretary—*

3 *“(1) shall issue a proposed rule implementing*
 4 *this subtitle within six months after the date of the*
 5 *enactment of this subtitle; and*

6 *“(2) issue a final rule implementing this subtitle*
 7 *within one year after such date of enactment.*

8 **“SEC. 899J. AUTHORIZATION OF APPROPRIATIONS.**

9 *“There are authorized to be appropriated to the Sec-*
 10 *retary such sums as may be necessary to carry out this sub-*
 11 *title for fiscal years 2007 through 2011.”.*

12 *(b) CLERICAL AMENDMENT.—The table of contents in*
 13 *section 1(b) of such Act is amended by adding at the end*
 14 *of the items relating to title VIII the following new items:*

“Subtitle J—Secure Handling of Ammonium Nitrate

“Sec. 899A. Definitions.

“Sec. 899B. Regulation of the sale and transfer of ammonium nitrate.

“Sec. 899C. Inspection and auditing of records.

“Sec. 899D. Administrative provisions.

“Sec. 899E. Theft reporting requirement.

“Sec. 899F. Prohibitions and penalty.

“Sec. 899G. Protection from civil liability.

“Sec. 899H. Preemption of other laws.

“Sec. 899I. Deadlines for regulations.

“Sec. 899J. Authorization of appropriations.”.

Amend the title so as to read: “A bill to authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, and for other purposes.”.

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