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**IDAPA 02
TITLE 02
CHAPTER 12**

02.02.12 - BONDED WAREHOUSE RULES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 69-231, Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.02.12, "Bonded Warehouse Rules". (5-3-03)

02. Scope. These rules clarify the procedure for licensing, collection and remittance of assessment, determining claim value, maintaining electronic records use of electronic scales and remedies of the Department for non-compliance. (5-3-03)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (5-3-03)

003. ADMINISTRATIVE APPEALS.

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (5-3-03)

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter. (5-3-03)

005. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (5-3-03)

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Standard Time, Monday through Friday, except holidays designated by the state of Idaho. (5-3-03)

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. (5-3-03)

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (5-3-03)

05. Fax Number. The fax number of the central office is (208) 334-2170. (5-3-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the Department. (5-3-03)

007. -- 009. (RESERVED).

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 69-202, Idaho Code. In addition, the following definitions apply to Sections 480 through 486. (5-3-03)

01. Cash Sale. Payment to the producer by the warehouse or dealer contemporaneously with the transfer of commodity to the warehouse or dealer. (3-15-02)

02. Commodity Indemnity Fund. Commodity Indemnity Fund is a trust fund and will be referred to herein as CIF. (3-15-02)

03. Credit-Sale Contract. An agreement in writing containing the provisions of Section 69-249 Idaho

Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (3-15-02)

04. Dealer. Is limited to dealers licensed by the state of Idaho. (3-15-02)

05. Deposit For Service. Deposit of a commodity by a person for cleaning, processing, reconditioning or the rendering of other similar services by a warehouse, but does not include either a cash sale, credit-sale, or open storage. (3-15-02)

06. Open Storage. The deposit of commodity by the producer for a period of time with the subsequent disposition of the same commodity or a fungible commodity as agreed to by the parties. (3-15-02)

07. Warehouse. Is limited to warehouses licensed by the state of Idaho. (3-15-02)

011. LICENSING.

01. Posting Of License. Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 69, Chapter 2, Idaho Code, the licensed warehouseman shall post the license in a conspicuous place in each place of business or in any other place as the Director may determine. The Department will issue a duplicate license for each additional facility as needed. (5-3-03)

02. Return Of Suspended Or Terminated License. If a license issued to a warehouseman has lapsed or is suspended, revoked or canceled by the Director, the license shall be returned to the Department. At the expiration of any period of suspension, revocation or cancellation the license shall be returned to the warehouseman to whom it was originally issued and shall be posted as prescribed by Subsection 011.01 of these rules. (5-3-03)

03. Suspension Due To Neglect. If, through subsequent inspection of stock in a licensed warehouse or place of business or through other information, it is revealed or indicated that the commodities in storage are deteriorating due to the warehouseman's or operator's neglect, the license may be suspended until the matter has been corrected to the satisfaction of the Director. (9-1-92)

04. Loss Of License. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate may be issued under the same number or a new number at the discretion of the Director. (9-1-92)

05. Sign To Be Posted. Each licensed warehouseman shall maintain suitable signs on the licensed property in such manner as will give ample public notice of his tenancy. These signs shall be painted on the warehouse or elevator in letters not less than six (6) inches in height and shall contain the following words: "State No. ____". The number of each warehouse shall be assigned by the Director. (9-1-92)

06. Bins Labeled. All storage areas licensed for the storage of agricultural commodities shall be numbered and a diagram of the storage areas shall be kept in the office. This diagram shall show the exact dimensions and the maximum capacity of the storage area. All licensed warehouses shall comply with all state laws and regulations regarding the storage and sale of seed. (9-1-92)

011. -- 049. (RESERVED).

050. RECEIPTING.

01. Every Warehouseman. Every warehouseman shall issue a negotiable warehouse receipt when requested to do so by the depositor. All storage and handling charges are due and payable on or before July 1 following the date of the issuance of the receipt, or as agreed upon by the parties. (9-1-92)

02. Form Of Nonnegotiable Warehouse Receipts. Nonnegotiable warehouse receipts which contain the essential terms for warehouse receipts as set forth in Section 28-7-202, Idaho Code, and Section 69-223, Idaho Code, shall be deemed sufficient for all purposes. Copies of all nonnegotiable warehouse receipts shall be kept as

permanent records by the warehouseman issuing them. (9-1-92)

03. Lost Negotiable Warehouse Receipt. In order to issue a new warehouse receipt supplementing one that has been lost or destroyed or to cancel an outstanding warehouse receipt that has been lost or destroyed, the licensed warehouseman shall require the depositor or other applicant to submit to the warehouseman: (9-1-92)

a. An affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it and how the original receipt was lost or destroyed; and (9-1-92)

b. A bond in the amount double the market value of the agricultural commodity represented by the lost or destroyed receipt. The market value shall be determined at the time this bond is submitted for the lost receipt. Such warehouse receipts issued in lieu of lost or destroyed receipts shall duplicate the original and bear a statement that it is issued in lieu of the lost or destroyed receipt. A duplicate warehouse receipt shall clearly state that it is a duplicate receipt, the number of the receipt the duplicate is replacing, and the license number under which the original receipt was issued. (9-1-92)

051. -- 079. (RESERVED).

080. FORWARDING AGRICULTURAL COMMODITIES.

Warehouses licensed under Title 69, Chapter 2, Idaho Code, receiving agricultural commodities for shipment to terminals or to other warehouses for storage or processing within the state or outside the state shall have in their possession a statement authorizing the shipment of agricultural commodities to another location for storage or processing. This statement shall be signed by the owner or producer of the agricultural commodity. The receiving warehouse shall be a state or federally licensed and bonded warehouse or have a Commodity Credit Corporation storage agreement. When requested to do so by an Idaho Warehouse Examiner, the shipping warehouse shall promptly procure from the terminal or storage warehouse a statement or negotiable warehouse receipt describing the quantity, class and grade of all agricultural commodities so shipped and in storage. Such statement shall be on a form approved by the Director of the Department of Agriculture. The shipping warehouse shall have such forms promptly forwarded and returned to the Idaho Department of Agriculture, Bureau of Warehouse Control, within fifteen (15) days of issuance. (9-1-92)

081. -- 099. (RESERVED).

100. OFFICE RECORDS.

A warehouseman shall maintain complete and sufficient records to show all deposits, purchases, sales contracts, storage obligations and loadouts of the warehouse in this state. Office records as set forth in Title 69, Chapter 2, Idaho Code, shall include, but not limited to, the following: (5-3-03)

01. Daily Position Record. This shall show the total quantity of each kind and class of agricultural commodity received and loaded out, the amount remaining in storage at the close of each business day, and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day. (9-1-92)

02. Storage Ledger. This shall show the name and address of the depositor, the date purchased, the terms of the sale, and the quality and quantity of the agricultural commodity purchased by the warehouseman. When applicable, the storage ledger shall also show the tare, grade, size, net weight, and unsold amount of agricultural commodities. (9-1-92)

03. Scale Weight Tickets. These shall be pre-numbered and show the time when the commodities were delivered, the quantities delivered, who delivered the commodities, the ownership of the commodities, and the condition of the commodities upon delivery. At least one (1) copy of the scale weight ticket shall be filed in numerical order. (9-1-92)

04. Receipts And Tickets. Receipts and tickets in the warehouseman's possession which have not been issued. (5-3-03)

05. Receipts And Tickets Issued By The Warehouseman. Receipts and tickets issued by the

warehouseman. (5-3-03)

06. Receipts And Tickets Returned And Cancelled. Receipts and tickets returned to and cancelled by the warehouseman. (5-3-03)

07. Insurance Documentation. (9-1-92)

08. Electronic Records. If any electronic records are maintained outside of the state of Idaho, the Department must be allowed to examine them at any reasonable time and place as determined by the Department. (5-3-03)

101. -- 129. (RESERVED).

130. LICENSE APPLICATION AND CONDITIONS OF ISSUANCE.

01. License Application. Application for a license to operate a warehouse under the provisions of Title 69, Chapter 2, Idaho Code, shall be on a form prescribed by the Department and shall include: (9-1-92)

a. The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation or other entity. (9-1-92)

b. The full name of each member of the firm or partnership, or the names of the officers and directors of the company or limited liability company, association, or corporation. (5-3-03)

c. The address of the principal place of business. (5-3-03)

d. Information relating to any judgments against the applicants. (9-1-92)

e. The location of each warehouse the applicant intends to operate and the commodities expected to be stored. (9-1-92)

f. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 2, Idaho Code. (9-1-92)

02. License, Conditions Of Issuance. An application for license under Title 69, Chapter 2, Idaho Code, shall include: (9-1-92)

a. Application on a form prescribed by the Director. (9-1-92)

b. A current financial statement as specified by Section 69-206, Idaho Code. (9-1-92)

c. A sketch or drawing as specified in Section 69-206, Idaho Code. (9-1-92)

d. A bond as required by Section 69-208, Idaho Code. (9-1-92)

e. Proof of insurance as required by Section 69-206, Idaho Code. (9-1-92)

f. The license fee as prescribed by Section 69-211, Idaho Code. (9-1-92)

g. Compliance with all rules adopted pursuant to Title 69, Chapter 2, Idaho Code. (5-3-03)

h. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 2, Idaho Code. (9-1-92)

03. Modification. If a licensee wishes to add additional capacity to an existing license, the Director may modify the license if all requirements of Section 69-206, Idaho Code, are met. (9-1-92)

131. -- 149. (RESERVED).

150. WAREHOUSES TO BE KEPT CLEAN.

Each warehouseman shall be required to use such precautions and surveillance as is necessary to provide for the safe and adequate storage of all commodities stored in his warehouse and to prevent these commodities from being contaminated in any way from chemicals, pesticides, fertilizers, adulterated seeds, animals, birds or any such thing as may contaminate or reduce the quality of stored goods. (9-1-92)

151. -- 179. (RESERVED).

180. WAREHOUSEMAN RESPONSIBILITIES.

01. Warehouse Receipts -- Quality. A warehouseman licensed under Title 69, Chapter 2, Idaho Code, shall maintain in the facility of issuance of any negotiable warehouse receipt, for as long as the receipt is outstanding and has not been canceled, like variety, quantity, and quality of the agricultural commodity stated on the receipt. No warehouseman shall remove, deliver, direct or permit any person to remove or deliver any agricultural commodity from any warehouse for which warehouse receipts have been issued and are outstanding, without receiving and canceling the warehouse receipt that was issued for the commodity, except if the Director determines an emergency storage situation exists. A warehouseman may then forward agricultural commodities to other licensed warehouses for storage without canceling the outstanding warehouse receipt, provided the following conditions are met: (9-1-92)

a. The warehouseman obtains written approval from the Department prior to forwarding agricultural commodities. (9-1-92)

b. The warehouseman shall provide written guidelines to the Department establishing how he will be back in position within the time limits set and granted by the Department. (9-1-92)

c. The warehouseman shall maintain and make available to the Department records of positions concerning the forwarding of agricultural commodities. (9-1-92)

d. The receiving warehouse shall be a state or federally licensed and bonded warehouse or have a Commodity Credit Corporation storage agreement. (9-1-92)

e. The shipping warehouse shall have in their possession a statement signed by the bearer of the warehouse receipt authorizing the shipment of agricultural commodities represented by such receipt to another location for storage. (9-1-92)

f. When requested to do so by the Department, the shipping warehouseman shall promptly procure from the receiving warehouseman a statement describing the quantity, class and grade of all agricultural commodities so shipped and in storage. Such statement shall be on a form approved by the Director. The shipping warehouseman shall have such forms promptly forwarded to the receiving warehouseman for verification of quantity, class and grade of agricultural commodities forwarded. This verification shall be returned to the Department within fifteen (15) days of issuance. Failure to provide this statement to the Department in the above specified time, will result in a short position for the warehouseman with penalties as prescribed by law. (9-1-92)

02. Rights And Duties Of Licensees -- Unlawful Practices. It shall be unlawful for a warehouseman to: (9-1-92)

a. Issue a warehouse receipt in excess of the amount of the agricultural commodity held in the licensee's warehouse to cover such receipt. (9-1-92)

b. Sell, encumber, ship, transfer, remove or permit to be sold encumbered, shipped, transferred or removed from a warehouse any agricultural commodity received by him for deposit, shipment or handling for which scale weight tickets have been issued without the written approval of the holder of the scale weight ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouseman. (9-1-92)

- c.** Remove or permit any person to remove any agricultural commodity from a warehouse when the amount of any fairly representative grade or class of an agricultural commodity in the warehouses of such licensee is reduced below the amount for which a warehouse receipt or scale weight ticket for the particular agricultural commodity is outstanding, except as provided for in Section 69-223(2), Idaho Code, and Rule 180.01. (9-1-92)
- d.** Issue a warehouse receipt or scale weight ticket which exceeds the amount of agricultural commodities delivered for storage. (9-1-92)
- e.** Issue a warehouse receipt showing a grade or description different from the grade or description of the agricultural commodities delivered and for which such warehouse receipt is issued. (9-1-92)
- f.** Fail to deliver agricultural commodities as required by Section 28-7-402, Idaho Code. (9-1-92)
- g.** Knowingly accept for storage any agricultural commodity destined for human consumption which has been contaminated, if such agricultural commodities are commingled with any uncontaminated agricultural commodity. (9-1-92)
- h.** Terminate storage of an agricultural commodity in the warehouse without giving reasonable notice to the depositor as provided in Section 28-7-206, Idaho Code. (9-1-92)
- i.** Alter, falsify, or withhold records from the warehouse examiner. (9-1-92)

181. -- 199. (RESERVED).

200. INSURANCE SETTLEMENT.

When the commodities within a licensed warehouse have been damaged or destroyed, the warehouseman shall make complete settlement to all depositors having agricultural commodities stored in the warehouse within ten (10) days after a settlement with the insurance company. Failure of the warehouseman to make such settlement shall be grounds for revocation of the license. However, such settlement need not be made within the ten (10) days period if the warehouseman and the depositor agree to other terms. In the case of commingled agricultural commodities where only a portion is damaged, settlement may be made on a pro rata basis to the owners of all agricultural commodities stored within the warehouse. (9-1-92)

201. -- 229. (RESERVED).

230. AGRICULTURAL COMMODITIES -- WAREHOUSE OBLIGATIONS.

Any agricultural commodity deposited for storage that is not sold by contract or otherwise, as shown by documentation, is open storage and shall be considered a warehouse obligation. (9-1-92)

231. -- 279. (RESERVED).

280. RECORDS -- SEPARATE.

All records and accounts required under Title 69, Chapter 2, Idaho Code, shall be kept separate and distinct from all records and accounts of any other business and shall be subject to inspection by the Director between the hours of 8 a.m. and 5 p.m., Monday through Friday, except holidays. (9-1-92)

281. -- 299. (RESERVED).

300. FINANCIAL STATEMENTS.

In order to obtain a bonded warehouse license, the applicant shall submit a current financial statement. The statement shall have been prepared not more than ninety (90) days prior to the date of application and shall conform to the applicable requirements of Title 69, Chapter 2, Idaho Code, as to annual financial statements. (9-1-92)

01. Statement Compliance. Each licensed warehouseman shall submit to the Department an annual financial statement which shall have been audited or reviewed by an independent certified public accountant or independent licensed public accountant. The statement shall be submitted to the Department no later than ninety (90) days after the end of the warehouseman's fiscal year. The warehouse license may be suspended or revoked for failure

to comply with licensing requirements stated in Bonded Warehouse Rule Section 300 and Section(s) 69-206(6) and (7), Idaho Code. (5-3-03)

a. The Department may grant an extension of no more than sixty (60) days, provided cause of an exceptional nature is provided, in writing, to the Department. (5-3-03)

b. The request must be made by a certified public accountant or a licensed public accountant. (5-3-03)

c. The request is made prior to the date the financial statement is due. (5-3-03)

d. The director may make exceptions to the financial statement requirements provided sufficient cause is provided and to do so would be in the best interest of the State. (5-3-03)

02. Statement Content. The statement shall include: (9-1-92)

a. A balance sheet. (9-1-92)

b. An income statement which includes annual gross sales of commodities purchased from producers covered under the act. (9-1-92)

c. A statement of cash flows. (9-1-92)

d. All accompanying notes to the financial statement. (9-1-92)

301. -- 329. (RESERVED).

330. AMENDING TARIFF.

Tariffs may be amended by the licensed warehouseman by filing a new tariff with the Department. The previous tariff shall continue to apply on all commodities received prior to the effective date of the amended tariff until the anniversary date of deposit. The amended tariff will apply to any commodities received after the effective date of the amendment and on any commodities stored under the previous tariff commencing on the anniversary date of the storage period. (5-3-03)

331. -- 379. (RESERVED).

380. LICENSE -- DURATION.

Licenses issued under the provisions of Title 69, Chapter 2, Idaho Code, expire on the 30th day of April of each year. (9-1-92)

381. -- 399. (RESERVED).

400. INSURANCE DEDUCTIBLE.

The maximum deductible allowed for insurance required by Section 69-206(1), Idaho Code, shall be five thousand dollars (\$5,000). However, a larger deductible may be allowed at the discretion of the Director. (9-1-92)

401. -- 429. (RESERVED).

430. ADDITIONAL BONDING REQUIREMENTS.

If it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the Department may require the licensee to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. (5-3-03)

431. -- 479. (RESERVED).

480. COMMODITY INDEMNITY FUND PROGRAM.

The Commodity Indemnity Fund Program shall apply to entities governed by Chapter 2, Title 69, Idaho Code, and Chapter 5, title 69, Idaho Code, warehouses and dealers, respectively, unless otherwise specified. (3-15-02)

01. Rate Of Assessment. The rate of assessment shall be two-tenths of one per cent (.2%) of the total value at the time of sale of the commodities pursuant to Section 69-257(2), Idaho Code. The maximum rate of assessment shall not exceed two-tenths of one percent (.2%) of the total gross dollar amount, without deductions, due the producer. The Director may establish a lower rate of assessment whenever he deems it advisable or as recommended by the advisory committee established by Section 69-261, Idaho Code. (5-3-03)

a. The rate of assessment on commodity withdrawn by its producer from open storage shall be one cent (\$.01) per hundredweight (CWT) of commodity at the time of withdrawal. (3-15-02)

b. If the amount of the assessment for a producer on all deposits made in a calender year is calculated to be less than fifty cents (\$.50), no assessment will be collected. If deposits exceed the fifty cent (\$.50) limit, all assessments will be collected. (3-15-02)

02. Exemptions To Assessments. Producers are not eligible to participate in CIF and no assessments shall be collected in the following cases. (5-3-03)

a. If a producer has a financial or management interest in a licensed warehouse or licensed commodity dealer, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code. (5-3-03)

b. If a producer sells to another producer, none of which are a licensed warehouseman or a licensed commodity dealer. (5-3-03)

c. If a producer deposits or delivers commodity to an unlicensed entity pursuant to Title 69, Chapters 2 or 5, Idaho Code. (5-3-03)

d. Non-producers or producers delivering commodity that was grown on land not situated within the boarders of the state of Idaho are exempt from paying assessments. (5-3-03)

481. (RESERVED).

482. HOW ASSESSMENTS ARE TO BE CALCULATED.

Assessments shall be collected by all warehouses from all producers who deposit commodities for storage or sale. Assessments are calculated as follows: (5-3-03)

01. Cash Sale Or Credit Sale Contract. In a cash sale or credit sale contract on the contract price of the commodity at the time of sale. (3-15-02)

02. Open Storage Or Deposit For Service. When commodity is withdrawn from storage by the producer, the assessment will be one cent (\$.01) per hundred weight (CWT) at the time of withdrawal. (5-3-03)

03. Unpaid Assessments. If any assessment is unpaid and a failure occurs, the amount of the unpaid assessment will be deducted from any CIF recovery paid to the producer. (3-15-02)

04. Incidental Costs And Expenses. All incidental costs and expenses including, but not limited to transportation, cleaning, in and out charges, insurance, taxes or additional services or charges are not included in the calculation to determine the assessment. (3-15-02)

483. RECORDKEEPING AND PAYMENT SCHEDULE.

01. Permanent Record. Each warehouse and dealer shall maintain a permanent record showing producer's name and address, lot or identification number, date assessment collected, amount of assessment, commodity assessed, quantity of commodity, gross dollars of settlement and check number issued to producer.

(3-15-02)

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Chapters 2 and 5 of Title 69, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter (1/4) will consist of three (3) months beginning on the first day of January, April, July, and October. (3-15-02)

03. Notice. The notice and rate of assessment or a copy of the official notice of suspension of assessment shall be posted in a conspicuous place in the warehouse or dealer facility. (3-15-02)

484. TRUST FUNDS.

All assessments collected by warehouses and dealers in compliance with Chapters 2 and 5, Title 69, Idaho Code, shall, immediately upon payment to and collection by the warehouse or dealer, be trust fund money and held for payment to the Department for the CIF. Such money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. (3-15-02)

485. PENALTIES FOR FAILURE TO COLLECT, ACCOUNT FOR, OR REMIT ASSESSMENTS.

Failure to collect, account for, or remit assessments, or violations of the statutory requirements of Chapters 2 and 5, Title 69, Idaho Code, as it relates to the CIF are grounds for the immediate demand on the warehouse, dealer bond, letter of credit, or certificate of deposit, and the undertaking by the Director of any other remedy provided by law. (5-3-03)

486. RETURN OF COMMODITY DUE TO FAILURE.

In the event of failure the Department may: (3-15-02)

01. Identifiable Commodity. Return specifically identifiable commodity or as much as is available to its producer in full or partial satisfaction of indebtedness; or (3-15-02)

02. Fungible Commodity. If the commodity is fungible, an amount equal to the producer's original deposit or if insufficient fungible commodity is available, a pro-rata share to all producers of the commodity; and (3-15-02)

03. Shortfall In Commodity Distribution. Any shortfall in commodity distribution may be submitted as a claim against the CIF. (3-15-02)

487. -- 999. (RESERVED).

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