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**IDAPA 38
TITLE 04
CHAPTER 08**

38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR

000. LEGAL AUTHORITY.

Section 67-1604, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing access to and use by the public of the capitol building and its grounds. Section 67-5709, Idaho Code, gives the Director authority to promulgate rules governing certain public facilities. (3-27-13)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." (3-27-13)

02. Scope. These rules contain the provisions for use of the exterior of the Idaho State Capitol. Rules governing the exterior of the other state facilities are codified under IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." Rules governing the interior of the Capitol Mall properties, other state properties, and the multi-agency facilities are codified under IDAPA 38.04.07, "Rules Governing Use of Interior State Property in the Capitol Mall and Other State Facilities." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (3-27-13)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department's office. (3-27-13)

003. ADMINISTRATIVE APPEALS.

These rules provide for appeals of the denial of a Permit under Section 403 of these rules. (3-27-13)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (3-27-13)

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS.

01. Office Hours. The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. (3-27-13)

02. Mailing Address. The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (3-27-13)

03. Street Address. The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (3-27-13)

04. Website Address. The Department's website address is <http://adm.idaho.gov/>. (3-27-13)

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (3-27-13)

007. SEVERABILITY.

Pursuant to IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (3-27-13)

008. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (3-27-13)
- 02. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (3-27-13)
- 03. Department.** The Department of Administration. (3-27-13)
- 04. Director.** The Director of the Department of Administration or his designee. (3-27-13)
- 05. Jefferson Steps.** The building entrance at the second floor of the State Capitol, the steps extending from the entrance, and the hard surface extending between the steps and the public sidewalk along Jefferson Street. (3-27-13)
- 06. Permit.** A written authorization issued by the Director allowing use of the State Capitol Exterior as set forth in the Permit. A Permit serves as a reservation to use a portion of the State Capitol Exterior with the priority for use set forth in Subsection 200.04 of these rules. (3-27-13)
- 07. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (3-27-13)
- 08. Public Use.** Use that is not: (3-18-14)
- a.** A State Event or Exhibit; (3-18-14)
 - b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; or (3-18-14)
 - c.** State Maintenance and Improvements. (3-18-14)
- 09. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (3-27-13)
- 10. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (3-27-13)
- 11. State Capitol Exterior.** The exterior of the Idaho State Capitol, the real property, the grounds, and the improvements on the exterior of the Idaho State Capitol or its grounds, all of which is located at capitol square as identified on the Boise City original townsite plat filed in the Ada County Recorder's office in book 1 on page 1. The State Capitol Exterior is bounded by the following streets: State Street, Sixth Street, Jefferson Street, and Eighth Street. (3-27-13)
- 12. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (3-27-13)
- 13. State Maintenance and Improvements.** Maintenance or improvement of the State Capitol Exterior by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (3-27-13)

011. -- 199. (RESERVED)

200. USE OF STATE CAPITOL EXTERIOR.

01. Authorized Uses by the Public. Except as provided otherwise in these rules, the State Capitol Exterior is available for Public Use. (3-18-14)

02. Prohibited Uses. The following uses are prohibited in the State Capitol Exterior: (3-27-13)

a. Commercial Activity. The State Capitol Exterior shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service on the State Capitol Exterior. (3-27-13)

b. Camping. (3-27-13)

c. Private Events and Private Exhibits. (3-27-13)

03. Priority of Uses. State Maintenance and Improvements shall have priority over all other use of the State Capitol Exterior. Public Use held under a Permit shall have priority over other Public Use. (3-18-14)

201. (RESERVED)

202. EQUIPMENT AND SUPPLIES.

Except as provided in these rules, the Department will not provide equipment or supplies for use on the State Capitol Exterior. Where requested in a Permit application for use of the Jefferson Street Steps, the Department may provide a podium and a public address system. (3-27-13)

203. ESTABLISHMENT OF PERIMETERS.

Security personnel and law enforcement may establish perimeters separating participants in Public Use of the State Capitol Exterior or State Events or Exhibits. Participants in and observers of any Public Use or State Events or Exhibits shall observe perimeters set pursuant to this section. (3-18-14)

204. AREA CLOSURES.

The Director may direct that any portion of the State Capitol Exterior be closed for Public Use upon a finding that the closed portion of the State Capitol Exterior has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Capitol Exterior closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Capitol Exterior. Circumstances presenting an imminent danger of damage to the State Capitol Exterior include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (3-18-14)

205. -- 299. (RESERVED)

300. RESTRICTIONS AND LIMITATIONS ON USE.

The restrictions and limitations on use of the State Capitol Exterior set forth in Sections 301 through 399 of these rules shall apply to all Public Use of the State Capitol Exterior. (3-18-14)

301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.

01. Interference With Primary Use of State Capitol Exterior. Events, exhibits, and Public Use of the State Capitol Exterior shall not interfere with the primary use of the Idaho State Capitol or the adjacent real property and improvements. The primary use of the Idaho State Capitol includes, but is not limited to, the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the Idaho State Capitol or the State Capitol Exterior. (3-18-14)

02. Interference With Access. Public Use of the State Capitol Exterior shall not block fire hydrants,

fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Capitol Exterior. (3-18-14)

302. LOCATIONS.

01. Locations. In addition to limitations on the interference with access set forth in Section 301 of these rules and compliance with all fire and safety codes, Public Use on the State Capitol Exterior shall be: (3-18-14)

a. On the Jefferson Street Steps or on hard surfaces, including concrete and granite, on the State Capitol Exterior; and (3-18-14)

b. At least fifteen (15) feet from the exterior walls and windows of the Idaho State Capitol. (3-18-14)

303. MAINTENANCE AND IMPROVEMENTS.

Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (3-18-14)

304. MOTORIZED VEHICLES.

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (3-27-13)

305. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.

Bicycles, skates, skateboards, and scooters may not be used on the State Capitol Exterior. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior, users must store non-motorized transportation in a designated storage area on the State Capitol Exterior. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (3-27-13)

306. ANIMALS.

The following shall apply to animals on the State Capitol Exterior: (3-27-13)

01. Wildlife. Unless authorized by the Director no person shall: (3-27-13)

a. Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot or throw any object at a wild animal on the State Capitol Exterior. (3-27-13)

b. No person shall feed, give or offer food or any noxious substance to a wild animal on the State Capitol Exterior. (3-27-13)

02. Domestic Animals. (3-27-13)

a. Domestic animals are not allowed on the State Capitol Exterior unless leashed and under the control of the person bringing the animal to the State Capitol Exterior. (3-27-13)

b. The person bringing the animal to the State Capitol Exterior shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (3-27-13)

307. LANDSCAPING.

No person other than state employees or contractors designated by the Director shall: (3-27-13)

- 01. Plants.** Damage, cut, carve, transplant or remove any plant including, but not limited to, trees, on the State Capitol Exterior. (3-27-13)
- 02. Grass.** Dig in or otherwise damage grass areas on the State Capitol Exterior. (3-27-13)
- 03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment on the State Capitol Exterior. (3-27-13)
- 04. Landscaping Materials.** Move or alter landscaping materials on the State Capitol Exterior including, but not limited to, rock, edging materials, and bark or mulch. (3-27-13)
- 05. Climbing.** Climb or scale buildings, Commemorative Installations, trees, fences, posts or other improvements on the State Capitol Exterior. (3-27-13)
- 308. FOOD AND BEVERAGES.** Consumption of food and beverages on the State Capitol Exterior is subject to the following: (3-27-13)
- 01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Capitol Exterior. (3-27-13)
- 02. Alcohol.** Alcohol may not be consumed or distributed on the State Capitol Exterior. (3-27-13)
- 309. SMOKING.** All persons shall observe the smoke free entrance notices and shall smoke only in designated areas of the State Capitol Exterior. (3-27-13)
- 310. FIRES, CANDLES, AND FLAMES.** No fires, candles or other sources of open flame are permitted on the State Capitol Exterior. (3-27-13)
- 311. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**
- 01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (3-27-13)
- 02. Railings.** No items may be placed on railings and no persons shall sit or stand on railings. (3-27-13)
- 03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of the Idaho State Capitol or improvements on the grounds of the State Capitol Exterior to another level or to the ground. (3-27-13)
- 04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Capitol Exterior, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (3-27-13)
- 05. Attaching, Affixing, Leaning or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Capitol Exterior or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Capitol Exterior or embedded into the ground including, but not limited to, placement of a stake, post or rod into the ground to support materials. (3-27-13)
- 06. Materials Causing Damage to Surfaces.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface on the State Capitol Exterior or any systems or utilities of the State Capitol Exterior including,

but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (3-27-13)

07. Free Distribution of Literature and Printed Material. All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Capitol Exterior that such material is not discarded outside of designated trash receptacles. (3-27-13)

08. Surface Markings. Users shall not use any material to mark on any surface of the State Capitol Exterior including chalk, paint, pens, ink, or dye. (3-27-13)

312. ITEMS SUBJECT TO SEARCH.

To enhance security and public safety, Security Personnel and law enforcement may inspect: (3-27-13)

01. Packages and Bags. Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (3-27-13)

02. Items. Items brought onto the State Capitol Exterior, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property on the State Capitol Exterior. (3-27-13)

313. PROHIBITED ITEMS.

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Capitol Exterior: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Capitol Exterior immediately remove from the State Capitol Exterior any club, bat, or other item that can be used to injure, damage, or harm persons or property. (3-27-13)

314. UTILITY SERVICE.

The public may not use the utility services of the State Capitol Exterior other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of Public Use authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Capitol Exterior or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (3-18-14)

315. LAW ENFORCEMENT AND FACILITY EXIGENCY.

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, security personnel and state employees or officials may direct all persons off of the State Capitol Exterior and delay or postpone any activity until the emergency or threat is abated. (3-18-14)

316. COMPLIANCE WITH LAW.

All use of the State Capitol Exterior shall comply with applicable law including, but not limited to, fire and safety codes. (3-27-13)

317. HEALTH, SAFETY AND MAINTENANCE OF STATE FACILITIES.

01. Clean Condition After Use. Users shall leave the State Capitol Exterior in reasonably clean condition after use, including depositing all trash in designated receptacles. (3-27-13)

02. Items Return to Proper Location. Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the event or exhibit. (3-18-14)

03. Public Health. No person shall excrete human waste at the State Capitol Exterior except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (3-27-13)

- 04. Fireworks.** No person shall possess or use fireworks on the State Capitol Exterior. (3-27-13)
- 318. -- 399. (RESERVED)**
- 400. PERMITS.**
- 01. Use Without a Permit.** A Permit grants a reservation providing priority for use of the area specified in the Permit as set forth in Subsection 200.04 of these rules. Applicants desiring to obtain a Permit for use of the State Capitol Exterior outside of the Permit areas, hours or duration or who have not submitted an application within the application period may use the State Capitol Exterior, subject to the provisions of these rules, on a first-come, first used basis. Permits will be issued to groups of two (2) or more people. (3-18-14)
- 02. Permit Areas, Hours and Duration, and Number of Participants.** (3-18-14)
- a.** The Director will consider and grant Permits only for Public Use of the Jefferson Street Steps. (3-18-14)
- b.** The Director will issue Permits reserving use of the Jefferson Street Steps only for the period between the hours of 7 a.m. and 6 p.m. on State Business Days. (3-18-14)
- c.** The duration of a Permit will not exceed four (4) consecutive hours. (3-27-13)
- d.** The Director will issue a Permit only for Public Use involving two (2) or more persons. (3-18-14)
- 03. Application Period.** Permit applications must be received and complete at least two (2) State Business Days prior to the requested date and time period of the Permit. The Department will not accept applications submitted more than six (6) months prior to the requested date of the Permit. (3-18-14)
- 04. Validity.** Permits are valid only for the dates, times, and locations specified on the Permit as approved by the Director. (3-27-13)
- 05. Distribution.** Permits shall be granted by the Director on a first-come, first-served basis, subject to Subsection 200.03 of these rules. Only one (1) Permit will be granted for the Jefferson Street Steps during any period of time. (3-27-13)
- 06. Application Requirements.** Applications for a Permit shall be in writing on a form prescribed by the Director and available at the office of the Division of Public Works and the Department's website. The Director will only process applications that are complete and signed by the individual making a request or an authorized representative of the entity or organization making the request. The Director may make reasonable inquiry to confirm the accuracy of the application and the authority of the party signing the application. (3-27-13)
- 07. Conditions.** The Director may impose reasonable conditions on the use of the State Capitol Exterior in the Permit for the purpose of protecting persons and property. Conditions may include the acquisition of liability insurance and a bond as security for costs arising from the use. (3-27-13)
- 08. Transferability.** Permits are non-transferable. (3-27-13)
- 401. APPROVALS AND DENIALS OF A PERMIT APPLICATION.**
- 01. Period for Approval or Denial.** The Department will approve or deny a complete application within two (2) State Business Days of the submission of the application. (3-18-14)
- 02. Basis for Denial.** Permits may be denied for one (1) or more of the following: (3-27-13)
- a.** A Permit has been granted for all or part of the requested location during all or part of the requested time period. (3-27-13)

- b.** A public entity or official will be using all or part of the requested location during all or part of the requested time period. (3-27-13)
- c.** The requested use would violate any provision of these rules or applicable law. (3-27-13)
- d.** These rules do not authorize the use for the location or times requested or do not authorize the issuance of a Permit for the location requested. (3-27-13)
- e.** The Permit application is incomplete, contains a material falsehood, or contains a material misrepresentation. (3-27-13)
- f.** The Permit applicant has not certified that the applicant will comply with these rules or applicable law. (3-27-13)
- g.** The party signing the application is not legally competent to bind themselves or the organization or entity submitting the application. (3-27-13)
- h.** The individual, organization or entity submitting the application: (3-27-13)

 - i. Failed to pay costs or damages arising from an earlier use of any state facility; (3-27-13)
 - ii. Made a material misrepresentation regarding the nature or scope of the use on a prior Permit application; (3-27-13)
 - iii. Violated the terms of prior Permits issued to the individual, organization or entity; or (3-27-13)
 - iv. Violated any applicable law in the course of previous Public Use of state of Idaho facilities. (3-18-14)
- i.** The requested use would cause a clear and present danger to the orderly processes of state of Idaho government or to the use of the State Capitol Exterior due to advocacy of: (3-27-13)

 - i. The violent overthrow of the government of the United States, the state of Idaho, or any political subdivision thereof; (3-27-13)
 - ii. The willful damage or destruction, or seizure and subversion of public property; (3-27-13)
 - iii. The forcible disruption or impairment of or interference with the regularly schedule functions of the state of Idaho; (3-27-13)
 - iv. The physical harm, coercion, intimidation or other invasions of the lawful rights of public officials or the public; or (3-27-13)
 - v. Other disorders of a violent nature. (3-27-13)

402. REVOCATION OF A PERMIT.

A Permit may be revoked by the Director for the violation of any term or condition of the Permit or the violation of law including, but not limited to, the violation of any provision of these rules. (3-27-13)

403. APPEALS.

01. Time for Appeal. The individual or the organization or entity submitting an application may request that the Department initiate a contested case within the period set forth below. The Department will not initiate a contested case after the following periods. (3-27-13)

- a.** Seven (7) State Business Days following the written denial of an application for a Permit. (3-27-13)

- b.** Seven (7) State Business Days following the revocation of a Permit. (3-27-13)
- c.** Seven (7) State Business Days following the date the Department was required to approve or deny the application for a Permit pursuant to Subsection 401.01 of these rules. (3-27-13)

02. Requesting an Appeal. The individual or the organization or entity submitting an application shall request an appeal in writing, with a physical copy delivered to the Director at the address set forth in Section 005 of these rules. Electronic delivery shall not be deemed a physical copy. The written request shall contain the following: (3-27-13)

- a.** The name, address, and contact information of the appellant; (3-27-13)
- b.** A concise statement of the reason the appeal should be granted; (3-27-13)
- c.** Whether the appellant requests informal disposition to expedite the contested case; and (3-27-13)
- d.** A description of the Permit sought. (3-27-13)

03. Informal Disposition. If an appellant requests informal disposition, the Director will accept written evidence submitted within five (5) State Business Days of the appeal request, or as otherwise agreed by the Director and the appellant. The Director will issue a final written order affirming, reversing or modifying the denial or revocation of the Permit. (3-27-13)

04. Contested Cases. If an appellant does not request informal disposition, the Director will schedule a hearing and proceed as set forth in Title 67, Chapter 52, Idaho Code. Contested cases will be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-27-13)

05. Judicial Review. Judicial review of orders issued in an appeal is provided as set forth in Title 67, Chapter 52, Idaho Code. (3-27-13)

404. -- 499. (RESERVED)

500. LIABILITY AND INDEMNIFICATION.

01. State Liability. Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (3-27-13)

02. No Endorsement. The grant of a Permit and any action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in Public Use of the State Facilities. (3-18-14)

501. -- 999. (RESERVED)

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