
WHITE PAPER: SPIREON - ELD UNANSWERED QUESTIONS Q&A

AOBRD Cutoff Is Coming

ELD and AOBRD Q & A: Compliance, Detention, and the Future of ELD

For a carrier still relying on automatic on-board recording devices (AOBRDs), the end is nigh. On Dec. 16, 2019, a hard cutoff goes into effect on AOBRDs grandfathered in under the electronic logging device (ELD) rule. Will there be an extension? Is it difficult to switch to an ELD? Why are so many trucks driving under 5 mph?

We asked our two go-to transportation experts — Dave Osiecki, president of [Scopelitis Transportation Consulting](#) and a former executive vice president of the [American Trucking Association](#) (ATA), and Dean Croke, chief insights officer for [FreightWaves](#) — to run through the most relevant questions we've heard recently about the hard cutoff.

COMPLIANCE

Q: Will there be another extension on ELD compliance like there was by OOIDA (Owner-Operator Independent Drivers Association)?

Dave: No.

The [FMCSA](#) (Federal Motor Carrier Safety Administration) has indicated very publicly in statements from the top of the agency that it will not be extending the ELD compliance base. I had an opportunity to be at a recent commercial vehicle safety alliance meeting, the organization that represents the state enforcement agencies that partner with FMCSA, and they made clear both that they have no interest in seeing an extension or supporting any type of an extension of the compliance state. So right now, it appears the answer is a pretty firm no.

Q: When drivers run out of hours at a shipper or receiver, how can they make it to a parking space without being in violation?

Dave: The driver can use the personal conveyance status to make it to a safe and reasonably located parking space without being in violation.

This is a relatively recent change. The driver has to select the personal conveyance status to use it, then deselect it when he is done. One appropriate use is for traveling to a nearby reasonable safe location to obtain required rest after loading or unloading. The resting location must be the first such location reasonably available.

Q: If a motor carrier opened and activated after the ELD mandate, but it had installed AOBDRs in its trucks prior to December 2017, can the company still use AOBDRs (ELD capable devices), or do they have to transfer all trucks to ELD?

Dave: No. It has to use ELDs on its trucks.

In this case, the rule says that not only do carriers have to install an ELD but they have to require a driver to use it. Since this company didn't open until after December 2017, the grandfather clause does not appear to apply to this type of operation.

Q: We see a lot of trucks crawling along in traffic, around parking lots, and at distribution centers under 5 mph. Why is this?



Dave: The software in the ELD automatically switches to driving mode at a speed threshold of 5 mph or greater. Anything under 5 mph, the ELD doesn't detect that the truck is moving and therefore the driver is not in driving mode in Line 3 of the electronic logging records. Once driving mode is triggered, drive time is on the record, drawing down off of the 11-hour driving limit.

It's very difficult to drive a Class A truck, a large truck, under 5 mph. I suppose it's possible, but it's very difficult. If that's happening and being seen, it's because of the way the rules are designed when the ELD has to pick up the driving status.

It's also dangerous. I understand drivers moving at a slow speed around distribution centers and truck stops, which should be standard operating procedure. Just last week, I was at the Massachusetts Department of Transport & Traffic Center and had the opportunity to talk to them about things like drivers pulling over to have the 30-minute break at the eight-hour mark in the breakdown lane. They said every 30 minutes a vehicle spends in the breakdown lane, it causes two hours of congestion after that.

Dean: One of the things we observed is that if drivers do in fact travel at less than 5 miles an hour in traffic, the speed differential compounds the traffic congestion behind them for some hours to follow. There is also a safety issue because we all know the speed differential between big vehicles and other motorists can lead to both stress and accidents.

Q: Please explain the rules around personal conveyance?

Dave: The ELD rule says a motor carrier may configure an ELD to authorize a driver to use personal conveyance, or PC. The carrier does not have to allow drivers to use PC. If they do, the driver has to select the PC status on the ELD when they use it, and when they are done, they have to deselect it.

There are six appropriate uses of PC:

1. Time spent traveling from a driver's route to lodging (such as a motel or a truck stop), a restaurant, or an entertainment facility.
2. Commute time between the terminal and his or her residence.
3. Time spent traveling to a nearby reasonable, safe location to obtain the required rest after loading or unloading. It has to be close by; it can't be 50 miles away.
4. Moving a CMV at the request of a safety official during the driver's off-duty time. This is the classic case of the inspector or officer knocking on the window when the driver is in the sleeper berth getting rest because the driver may have chosen a location that the trooper thinks is inappropriate or even an illegal parking location.
5. Time spent transporting personal property while off-duty.
6. Authorized use of a truck to travel home after working at an offsite location.

I would highlight one inappropriate use of PC in particular: any continuation of the interstate commerce trip in order to fulfill a business purpose. In other words, moving the truck in an off-duty status to fulfill a business purpose to get further down the road. That's illegal. Staging closer to the next pickup location is an inappropriate use. There is a [guidance page on the FMCSA website](#) that helps.



Q: The ELD regulation does not allow for driving time to be edited to any non-driving status. However, there are three driving “types” listed in the regulation: normal driving, yard movement, and personal use. Is there a possibility that the regulation may change so that driving time can be edited between the three driving types?

Dave: No.

I had a chance to speak with some of the regulators very recently. I specifically posed this question whether they had any near-term intention of going back to rulemaking to change the regulation, particularly editing driving time, and their answer was no, we have no interest in doing that.

Keep in mind that you can add to a driving time, so if somebody uses the PC time inappropriately, and it really should have been on-duty not off-duty driving time, it can be added to the driver’s driving time on Line 3 of the electronic log. So you can add to a driver’s driving time.

What a driver or carrier cannot do is shorten driving time. So it’s a one-way edit capability. You can add the driving time, but you can’t shorten driving time through edits.

Q: Do you have any information on how the feds and states are training their inspectors on the ELD mandate?

Dave: Most roadside inspections are done by state agency personnel. State agency personnel are trained consistent with [Commercial Vehicle Safety Alliance](#) (CVSA) recommendations and CVSA standards.

CVSA has an [inspection bulletin](#) for ELD inspections on its website and a [nine-minute training video for inspectors](#). It’s publicly available, and carriers can use it to train their drivers. They can show their drivers at the next driver meeting what the CVSA and state inspectors are learning and how to undertake an inspection as it relates to the ELD device and hours of service as it relates to the ELDs.

Q: I take exception to the idea that hours of service compliance has improved. I know for a fact that in the past two years, enforcement officers have ignored reviewing hours of service at inspection due to their own bias against the technology and ELD mandate and aren't writing citations even when clear violations are present. Therefore, the compliance numbers decreased due to lack of accurate DOT enforcement. Do you agree?

Dave: I don't have any data to dispute what FMCSA puts out on its website. I don't have any firsthand knowledge that enforcement officers are ignoring hours of service at inspection locations. I have heard that over time, it depends on an inspector's comfort level with the ELD device. And if you are not comfortable with the device or the technology, you may just kind of wave the driver through. I am certain some of that is going on. I am not aware of any sort of persistent approach to letting drivers pass at inspections in terms of their hours of service checks.

I believe that the compliance numbers really have gotten better. I would point out [a recent study](#) done by three universities that joined together to look at the compliance data as well as the crash data since the ELD mandate went into effect in April 2018. That study indicated that there was better compliance and improvement of hours of service compliance as a result of the adoption of ELDs thus far.

Q: Our company is logging days only, home at night, in a 100-mile radius. Are we required yet to use ELD?

Dave: Probably not.

It sounds like you are a 100-air-mile-radius operation, and because you operate only during the day, you are probably within the other conditions.

The short-haul exemption from ELD rules has five conditions:

1. 100 air miles
2. 12-hour maximum a day
3. 10 hours off between duty shifts
4. No more than 11 hours driving, which is almost impossible
5. The company has to maintain time records for the past six months showing:
 - The time the driver reported to duty each day
 - The total number of hours the driver is on-duty each day
 - The time the driver is released from duty each day

Q: Does the ELD compliance regulation vary by fleet size (one or 100, or 1,000, or 10,000)?

Dave: No, there is no fleet size distinction in the ELD rules.

Come December 2019, every carrier and every driver the ELD rule is applicable to has to use ELDs and that's that. This is the final compliance state. It's going to be here before we know it and there is not likely to be an extension to it at this point.

Q: How easy is it to convert from AOBRD to ELD?

Dave: It depends on the size of the company. It depends on the vendor. It's not all that difficult. It gets more difficult the larger you are — particularly if you have multiple locations. But because most of the AOBRDs on the market can be upgraded by a software upgrade and most of those software upgrades happen over the air, the vendor pushes the software updates over the air to the device.

In some cases the ELD might need a license and the license may need to be activated by the vendor so that the carrier can convert it to a ELD when the over-the-air software update is made.

There are some driver-related issues in terms of usernames. There are software changes that need to be made from AOBRD to ELD. There is training involved for the drivers, because ELDs really are different, they look different, they transfer data differently. The packet of information has to be broader and more comprehensive for a driver to have with him or her when he or she is in the truck.

So there are different things, but it's not all that difficult. They do take time to plan, understand the steps, work with vendors, and train drivers. New policies have to be put in place. There are other pieces of information, other records, that have to also be kept by the company and by the driver to verify that the ELD information is indeed accurate. There are policies and training around that as well.

It's not a terribly difficult process but it does take time to plan it and execute it.

Q: The devices our company purchased that were branded as ELD are really AOBRD. The manufacturer has to upload new software by December 2019 to make it an ELD. Why would a manufacturer sell a device branded as an ELD that was really an AOBRD?

Dave: That's a really difficult question for me to answer at this point without direct knowledge to the situation. It could be any number of reasons. Maybe the AOBRD manufacturer was trying to take advantage of the ELD mandate and gain market share by just getting its technology out there. Or it could simply have been a mistake that the manufacturer didn't understand the differences between an ELD and an AOBRD. There are a lot of new entrants, new players, in the ELD market that don't have a lot of experience in the trucking industry.

The key now is, as you indicated, getting the new software uploaded by December, making the transition, making sure it's compliant and on the self-certified list of FMCSA and so forth.

Q: What is the proper procedure for correcting a driver's log when when an ELD malfunctions? Should the driver stop using the ELD system entirely and re-create his/her past seven days, or is a combination of the ELD-recorded days when it was working and paper log for the day it broke acceptable?

Dave: This is pretty clear in the regulations and even more clearer in the frequently asked questions that FMCSA has developed and posted on [its website](#).

A combination is certainly acceptable, but if there is a malfunction, the first thing that needs to happen is the driver has make a notification in writing to his or her employer's company.

For compliance purposes, they have to re-create the current day on a paper log. They may have to re-create the previous seven days to be in full compliance, unless they can access the previous seven days in the ELD or if they can get a PDF file from the company. They can then add the paper log to the PDF file for the previous seven days when the ELD malfunctions.



DETENTION

Q: What is the baseline for detention? In other words, is it two hours free and then increasing, averaging 25-plus minutes past the two-hour mark?

Dean: Generally speaking, it's about two hours of free time and then detention rates start.

There is no real baseline or industry standard. Most people tend to use two hours of free time to unload or load a trailer. After that, detention is going to be incurred at somewhere around \$50 per hour on average.

Larger fleets now have detention departments and as soon as there is a certain amount of detention accrued as a truck sits unloading and loading, there are emails going back and forth between shipper and motor carrier.

For the freight brokers in the industry, sometimes it's hard to know when a driver is being detained which is a problem for recouping detention. When did a truck arrive? When did it actually get on the dock? When did detention start?

Now, the problem I have with it is it doesn't take two hours to unload and load a truck. In fact, you can put 24, 26 pallets into a trailer or pull them out of the trailer quite quickly. I question the basic premise of why do we give two hours of free time for shippers to unload or load freight? It just doesn't make any sense to me. Now of course, there are appointment time issues. Sometimes, drivers turn up late, sometimes they turn up early, sometimes the shipper isn't ready for the load to be unloaded or loaded. There are production line issues. There are all sorts of things that go on.

Q: Will detention findings be made publicly available by individual shippers? If so, will they need to become more stringent on loading times?

Dean: The reality is that market forces are going to dictate what shippers do. We have seen capacity increase considerably from where it was this time last year. Freightwaves' Outbound Tender Rejection Index (fig. 1) tells us carriers are accepting close to 96 percent of loads that are tendered today. That means capacity is quite loose and carriers are hauling any freight they can just to cover basic operating costs.

Over the same 12-month period where capacity has increased substantially, wait times at shippers has increased 20 percent. It's almost a linear increase between capacity increasing and wait times at shippers. What that tells me is that as shippers have found more capacity in the market and more trucks, they have paid less attention to how long drivers spend on loading docks because they can always find another truck.

Shippers will change their ways just like they did last year when capacity was really tight and wait times were really quite good. But what I see today is quite the opposite. I think market forces are going to dictate where this goes, and it won't be until the market re-balances.

FUTURE/RESULTS

Q: Have ELDs/AOBRDs improved safety, and if not, will we return to regular logs?

Dave: We are not going to go back to paper logs. That ship has sailed. It is premature to think the data can tell us if these devices have improved safety yet. Most drivers who have already gone to electronic logging don't want to go back to paper.

Dean: I studied paper log fleets for about six years and drivers that were on paper logs versus electronic logs had 30 percent fewer DOT-recordable accidents. The fact that they were 30 percent lower tells me that the paper logs afford a degree of flexibility that allow drivers to self-select their own safety outcomes.

I think one of the challenges brought about with ELDs is its prescriptive nature and the hope for added flexibility in hours of service to provide some options around stopping the 14-hour clock for a rest break.

Any way we can encourage drivers to have more rest breaks instead of run miles will help improve safety. However, the way the rules are written right now, the improvement in safety is questionable. My evidence suggests that we actually could see adverse outcomes if we don't have the flexibility that the Notice of Proposed Rulemaking is meant to address.

Q: Do we have any data showing pre- and post-ELD driver pay?

Dean: No.

Data about pre- and post-ELD driver pay is kept pretty closely to the vest. Gordon Klemp at the [National Transportation Institute](#) puts out some quarterly indices. We did not see a significant increase in the number of hours drivers are driving, so I don't think there has been any significant impact on net or gross pay.

Q: Will there be any changes in personal conveyance limits?

Dave: No.

FMCSA has resisted every attempt by the industry, and more recently, attempts by the enforcement community represented by CVSA to put a catch or limits on personal conveyance. They are done with dealing with it, it's in the ELD rules, it's allowable driving status, and they provided guidance.

Q: How will the proposed hours of service changes affect the mandate?

Dave: We are going to have to wait and see.

We should think about these things in two different lights. The ELD is really a compliance mechanism, whereas the hours of service rules are the underlying rules for both safety and operations.

The hours of service changes are simply going to be a proposal. By the time they are finalized, the ELD mandate will have been in full effect for everyone who is subject to it. Subsequent to that, if there are final hours of service changes, of course each of the vendors will have to reprogram their systems to provide for the different rule sets.

Will it affect the mandate near term? No. Will hours of service changes potentially provide more flexibility? Maybe. There may be some flexibility in the rest break and may be flexibility in the sleeper berth requirements, but we will have to wait and see. Near term: very little affect, in my opinion.

Dean: One of the things that's really encouraging is the amount of attention the current FMCSA administration is paying to what the industry is saying. It's the first time in a long time I have seen the FMCSA meeting with operators at truck shows and major industry events and listening. I think they have done a great job in absorbing information and public comment, and although that doesn't guarantee change, some will happen, even though we don't know what just yet. I am really optimistic that some flexibility will come with the Notice of Proposed Rulemaking that's out now."

Q: Are drivers leaving the industry as a result of ELD implementation? Are shippers making changes to deal with the mandate?

Dave: No.

I don't know of any mass exodus on the driver side from the industry as a result of ELD limitation. I have certainly heard some drivers are being pushed into retirement because they are just not interested in the technology, and they were closed to retirement anyway.

Dean: I don't think drivers are leaving as a result of the ELD implementation. Remember that capacity was pretty constrained last year; driver rates and pay were going up. Carriers were benefiting from some pretty robust demand for motor carriers. So drivers did pretty well.

I don't think drivers are leaving as a result of the ELD implementation, and I certainly don't see shippers making any significant changes to deal with the mandate. The excess capacity in the market really gives them the opportunity to hold drivers longer.

Q: Is the ELD mandate affecting market rates for available loads?

Dean: Not significantly.

So many different things affect market rates. One of the major reasons rates increased this time last year were things like high oil prices and recovery from two big hurricanes in late 2017. There was change to the tax code. Some economic stimulus in the first quarter last year occurred with record levels of spending in the industrial economy, so rates were really high. A lot of people bought new trucks in the third quarter of 2018. None of it had anything to do with the ELD mandate. Truckers were doing pretty well this time last year.

It's a different story today. Capacity is really loose. Freight volumes are about the same as they were last year, but there are a lot more trucks in the market, especially in the smaller fleet size.

ELD isn't the reason for market rates being where they are in terms of the volume of freight. Where it does have an impact is the tweener freight market: freight that used to be same-day delivery that's now pushed out to second day. It's kind of in that 450- to 800-mile range where ELDs affect carriers and shippers. That's about the only place we have seen some impact.

Q: Has the “ELD effect” — 2018 rate heights and new normal of average spot market — been cancelled out by the current freight slow down? Will electronic-log regulations have a significant impact on rates this summer and the rest of the year?

Dean: Yes.

The ELD effect isn't necessarily the main thing driving that now. I think capacity is constrained for other reasons. Everyone with a Class A truck, more than 10,000 pounds, and operating outside of that 100-air-mile radius has an ELD. It's already baked into the rates in terms of utilization levels. I think a slow-down in global trade will have a bigger impact. The trade rule that's ramping up with China will have a much bigger impact on rates this summer.

We need to look at other things besides the ELD mandate to understand what's going to happen this summer.

Q: Has the ELD mandate led to a noticeable reduction in driver accidents? Is there any research on crash severity?

Dave: The FMCSA believes it's too early to tell. It has not released any accident or crash-related analysis, whether that be total crashes, fatalities, or crash severity.

The three universities I mentioned earlier looked at FMCSA's crash data and did some analysis. They found that the mandate has had no effect on crash counts. And they looked at a whole series of weeks of crash counts since the early part of the ELD mandate.

Q: What is the average number of driving hours we are seeing from ELDs across the country?

Dean: For over-the-road drivers, the average on Line 3 is seven hours and 40 minutes.

For regional operators, drivers that probably have sleeper cabs in the regional space, the average is seven hours and 15 minutes.

For short-haul operators in the 100-air-mile radius zone, their average hours are 4.92 hours, so call it five hours per day. They are more than likely working on 12-hour shifts and running 60-hour weeks over five days, so probably a 5:2 schedule.

The average haul of drivers regardless of length of haul is about 6.8 hours.

Q: What is going to happen to the carriers that don't have approved ELDs?

Dave: If a driver is inspected and he or she doesn't have an improved ELD or no ELD for that matter, he or she is considered not to have a record of duty status. Therefore the driver would be put out of service during an inspection.

But what happens to the carrier? If a carrier is discovered to be operating without approved ELDs or with no ELDs, they are typically cited and fined by the FMCSA. A shutdown could be ordered; though that is sort of the ultimate penalty. Typically, they're probably out of service for the driver roadside, probably an audit, and a civil penalty, a fine for the carrier.

If there's a continuing pattern of lack of use of ELDs by a carrier, it can ramp up and to a shutdown order by the federal government to the carrier to stop operating.

Q: Is ELD being leveraged to evaluate shipping locations?

Dean: Yes and no.

A lot of vehicle telematics data in general is being used. It could be trailer telematics, it could be refrigeration motors, it could be IoT (Internet of Things) sensors and pallets embedded in trailers. It could be the navigation device in the cab, it could be the driver's phone (if he's paired to a big data aggregator) to provide visibility into the location of loads.

It's not just ELDs, it's essentially any device on the truck or the driver's person that produces latitude and longitude at a specified interval. All of that data is anonymized and aggregated and can be used for useful purposes.

In particular, it can help determine where truck stops and rest areas should be located to address the driver shortage. I wouldn't be too concerned about the commercial side, though; I know it's being used for commercial real estate to help determine where warehouses should be located and in what proximity to highways.

Q: Shippers and receivers have a huge effect on carrier performance. Why does the government keep trucking on a hamster wheel with no suggestion of compliance of some kind for shippers and receivers?

Dean: In other countries, there is far better precedent. In my home country of Australia, we have a government regulation called the Chain of Responsibility. There is similar legislation here, but it's not nearly as onerous.

The real answer is that in other countries where there is precedent, anybody involved in the shipping of goods in the entire supply chain can be held liable in the event of accidents, including shippers, drivers, truckers, carriers, and dispatchers.

The free market system — with work taking place on public roads that we have to share with other people — is a far more prescriptive regulatory approach to safety. The reality is, regulations are designed around the worst possible scenario. But there are a lot of great operators that are really safe and function properly.

Unfortunately, there is that small percentage of operators that make it bad for everybody. That's why government places prescriptive regulations on the industry.

They don't have the same exposure with shippers and receivers because they do not operate on public roads. That's essentially the difference. It's where the work takes place.

Q: Do you have any data on how many carriers are AOBRD versus ELD compliant? Do you foresee major issues for carriers that are currently AOBRD-compliant getting fully ELD-compliant by December?

Dean: Yes and yes.

We surveyed about 300 fleets at FreightWaves and about 43 percent were on AOBRDs. This was really interesting in that these were people that had recently acquired the technology.

Just less than half of the industry is using the older technology and will have to figure out a way to become compliant. I think the industry is in for a really big shock because the part of the survey that really surprised us was the percentage of carriers that were going to leave it until Q4 to figure out if their ELD provider was going to be compliant or not.

My message to anybody today is if you are using AOBRDs and we are already in the latter part of May, you need to get busy and get with your vendor to figure out:

- A. If they are going to be compliant with the new regulations, and
- B. What they are going to do to upgrade the firmware in your devices.

You can't wait until Q4, that's going to be way too late and then you will be running into noncompliance issues.

Q: Do you see any further regulations that could be more restrictive perhaps in HOS impacting the industry?

Dave: No, not in this administration. This administration is more interested in deregulation and in providing flexibility as it relates to hours of service. Within the next at least year-and-a-half years that this administration has left, no, we are not going to see more restrictive hours of service rules.

Q: How likely is it that the ELD/AOBRD data is being used for data mining for autonomous trucks?



Dean: Great question. It's one of those futuristic questions. I don't have an answer in terms of autonomous vehicles, but I will say that it's entirely likely that it could and should be used in a way that can help drivers.

I like to think about driver-assist technologies as opposed to autonomous. I just don't see that in the foreseeable future. I do see the driving task changing. Where I would love to see ELD data used is in a way that could help the driver "de-task." One of the things that drivers struggle with is vigilance behind the wheel. If you could find a way to use technology to help drivers figure out when they could let autonomous vehicles take over the driving and then through the ELD data figure out a way for them to go off-duty or on to Line 3, for example, to preserve their driving hours, I think that would be a really valuable use of ELD data.

It will be used eventually and I think for the betterment of drivers because drivers struggle to stay awake at night. Any way we can use autonomous vehicles to help find a way for them to relax from the vigilance of the job would be really advantageous.

Q: Do you have any idea of the number of carriers that have yet to upgrade from AOBRD to ELD?

Dean: All we have is the rough percentage. Having worked at some of the large telematics firms, I know that most of the large fleets in the industry had ELDs. Some going back to 1998 — certainly the early 2000s.

A lot of the large fleets have already moved to ELDs, largely as a way to defend against plaintiff attorneys who use paper logs to determine whether a driver was fatigued in an accident.

As for the rest of the industry, when ELDs came in, we saw about two million new devices get installed in vehicles across the industry. Beyond that, we know that 43 percent of those we surveyed had AOBRDs.

Q: Will there be increased enforcement and further special paperwork requirements after the December deadline when people are stopped roadside?

Dave: I don't think we will see increased enforcement. I think we will see sustained enforcement. The number of enforcement personnel is not going to go up. The emphasis will remain the same as it is today.

Regarding supporting documentation, that's trip records, bills of lading, driver fuel receipts, and the other receipts that may reflect "on-duty not driving." All must be in possession. If the driver has them and they are normal course-of-business documents, they have to be provided during roadside inspection. In terms of the volume, the amount, and the emphasis, I don't see that changing in any significant way in December.

They will be trained better, so they will be able to detect violations and understand the systems better than today.

For the latest information about ELDs and the forthcoming hard deadline on AOBRDs, visit spireon.com/spireon-eld-mandate-resource-center or call one of our friendly experts at 800.557.1449.

Dave Osiecki and Dean Croke were the featured guest speakers for "[The State of the Industry and the ELD Mandate: The Verdict One Year Later](#)" a recent webinar hosted by Spireon. To see the upcoming slate of Spireon webinars featuring fleet and trailer management, visit spireon.com/webinars.



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