

THOMSON REUTERS PRACTICAL LAW

Bill of Lading Terms and Conditions

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General terms and conditions commonly found on the reverse side of a non-negotiable bill of lading prepared by the carrier for the provision of transportation services. This Standard Document reflects terms and conditions that are commonly used by carriers in non-negotiable bills of lading. This Standard Document has integrated drafting notes with important explanations and drafting and negotiating tips.

READ THIS BEFORE USING DOCUMENT

This Standard Document contains terms and conditions commonly found on the reverse side of a non-negotiable bill of lading prepared by a motor (truck) carrier for the interstate inland transportation of goods. Per industry custom, the terms and conditions of this bill of lading are subject to a separate document called a motor carrier tariff, which contains additional pro-carrier terms and conditions that supplement the terms and conditions found in this bill of lading. Many shippers, however, prefer to have their own form of bill of lading containing terms and conditions that are more favorable to them than the carrier's form of bill of lading, with its carrier-favorable terms and related tariff provisions.

A bill of lading is a [Uniform Commercial Code](#) (UCC) Article 7 document of title that is issued by a carrier to the party requesting transportation services (shipper). A bill of lading:

- Provides evidence of title to the goods identified on the bill.
- Provides the shipper with evidence of the carrier's pick up of the goods to be shipped.
- Serves as a contract that provides terms and conditions under which the carrier agrees to ship the goods on behalf of the shipper.
- If negotiable, entitles the person possessing the bill of lading to obtain possession of the goods.
- If non-negotiable, entitles the consignee named on the bill of lading to obtain possession of the goods.

For more information about bills of lading generally, see [Practice Note, Bills of Lading](#).

Motor Carrier Tariff

Federal law requires motor carriers to maintain a written or electronic copy of the "rates, classifications, rules and practices" that apply to its shipments ([49 U.S.C. § 13710](#)). This bill of lading conforms to federal law and with industry practice by providing that the shipment is subject to the rates, classifications, and rules that have been established by the carrier in a separate motor carrier tariff. Carriers also maintain tariffs to set out a variety of pro-carrier risk allocation provisions that they want to enforce against all shippers. Some of these are discussed below in the drafting notes of the corresponding bill of lading provisions.

Federal law requires applicable carriers to give the shipper a copy of the tariff on request ([49 U.S.C. § 13710\(a\)\(1\)](#)). There is no requirement that a tariff be publicly accessible to be part of an enforceable contract between the shipper and the carrier. Many carriers, however, make their tariffs publicly available on their websites.

Because the carrier drafts both the bill of lading and the motor carrier tariff, it should ensure that there is no conflict between the two documents. However, the carrier may want to specify in the tariff, that in the event of a conflict, the tariff controls. However, the shipper typically wishes the bill of lading to control because the bill of lading is the document it is signing (and may modify). In most cases, the carrier is likely to agree to specify in the bill of lading that in the event of a conflict the bill of lading controls over the tariff.

Governing Law and Forum

Bills of lading are generally governed by The Federal Bills of Lading Act (Federal Act) ([49 U.S.C. §§ 80101 - 80116](#)), as well as Article 7 of the UCC, as enacted by the relevant state. Because both UCC Article 7 and court cases interpreting Article 7 can vary from state to state, counsel should always refer to the law of the specific jurisdiction governing the transaction. UCC Article 7 supplements, but is generally consistent with, the Federal Act.

While this bill of lading is silent on the forum for settling disputes, carriers frequently include detailed provisions in their motor carrier tariffs requiring the shipper to submit to exclusive arbitration, subject to any exception for arbitrability. Tariffs sometimes also make exceptions allowing claimants to bring small claims in small claims courts or other courts of limited jurisdiction.

For more information on drafting and negotiating governing law clauses and choice of forum clauses, see [Standard Clauses, General Contract Clauses: Choice of Law](#) and [General Contract Clauses: Choice of Forum](#) and [Practice Note, Choice of Law and Choice of Forum: Key Issues](#).

Assumptions

These terms and conditions assume that:

- **This Standard Document is not designed as a master agreement and covers a single transportation transaction only.** If the carrier transports additional goods on behalf of the shipper, each further transaction is governed by a new bill of lading. For sample long-form transportation agreements that contemplate multiple shipment transactions, see [Standard Documents, Transportation Agreement \(Pro-Carrier\)](#) and [Transportation Agreement \(Pro-Shipper\)](#).
- **These terms are printed on the reverse side of the bill of lading.** The front side of the bill of lading generally sets out the business terms of the transportation arrangement, including:
 - a description of the goods shipped;
 - the quantity of the goods shipped;
 - the shipping and handling fees;
 - any other services provided;
 - reference to the carrier's tariff;
 - the reference number for the transaction; and
 - signature blocks for execution by an authorized representative of the carrier and an authorized representative of the shipper.
- **The carrier does not provide common carrier services.** Examples of common carriers include public airlines, bus lines, taxi companies, railroads, and cruise ship lines. A common carrier provides transportation services:
 - to the public without discrimination under mandatory pricing under a public tariff; and
 - must carry cargo insurance and demonstrate compliance by filing a form BMC-32 with the Federal Motor Carrier Safety Administration (FMCSA) (see [Practice Note, Logistics: Federal Agencies Overview: Federal Motor Carrier Safety Administration \(FMCSA\)](#)).
- **The carrier provides contract carrier services.** A contract carrier typically provides for-hire truck transportation services to specific individual shippers based on private contracts (such as this bill of lading) to be entered into between the carrier and each shipper or the carrier and the freight forwarder on behalf of the shipper. Contract carriers and shippers (or freight forwarders on behalf of shippers) negotiate the terms of the transportation agreement, including:
 - the services to be offered;
 - the prices to be charged and payment terms; and
 - whether the contract carrier must carry cargo insurance.

- **This Standard Document is subject to a motor carrier tariff.** It is common for a bill of lading to refer to and incorporate by reference the terms and conditions of a separate document called a motor carrier tariff. The Carmack Amendment requires a motor carrier, which is not required to file its tariff, to provide the shipper on request a copy of its tariff. The tariff may contain, among other provisions, provisions dealing with:
 - limitation of liability (see Section 6);
 - high value shipments (see Section 8);
 - consequential damages (see Section 6); and
 - payment protection (see Section 7).
- **These terms contemplate that the carrier is providing truck transportation services.** The parties should not use this form if they contemplate the provision or purchase of rail, water-borne, pipeline, or air transportation services, which involve industry practices and legal and practical considerations that are beyond the scope of this resource.
- **These terms contemplate the interstate inland transportation of goods within the US.** If the goods are to be shipped outside of the US or either of the parties is organized or operates in or is located in a foreign jurisdiction, the parties must modify the agreement to comply with applicable laws and international treaties. These include, for example, the CMR Convention (Convention on the Contract for the International Carriage of Goods by Road, as amended), which regulates a carrier's liability in international overland shipments.
- **The shipper is not a government entity.** In the US, contracts with federal and state government entities are more heavily regulated than non-government contracts. Therefore, if the shipper is a government entity, the parties must revise this bill of lading.
- **These terms are for a non-negotiable bill of lading.** This Standard Document recognizes that in commercial transactions, the transportation business is generally conducted using non-negotiable bills of lading (also called straight bills of lading), instead of negotiable bills of lading, which are [negotiable instruments](#) (also called order bills of lading). Issuing a non-negotiable bill of lading furthers the movement of goods within the manufacturing supply chain by allowing a financing party to obtain a priority perfected security interest in the goods without having to take possession of each bill of lading that is issued if, among other things, the financing party properly perfects the security interest under [UCC Section 9-312\(d\)](#). When a negotiable bill of lading is issued, a security interest filed against the shipped goods can be superseded by a secured party that takes possession of the negotiable bill of lading.
- **These terms are being used in a business-to-business transaction.** These provisions should not be used for transactions with individual consumers, which may involve legal and regulatory requirements and practical considerations that are beyond the scope of this resource.
- **These terms are not industry-specific.** These provisions do not account for any industry-specific laws, rules, regulations, or practices that may apply to the transportation of certain goods.

Bracketed Terms

Bracketed items in ALL CAPS should be completed with the facts of the transaction. Bracketed items in sentence case are either optional provisions or include alternative language choices to be selected, added, or deleted at the drafter's discretion.

Non-Negotiable Bill of Lading

1. Applicability. [NAME OF CARRIER] ("**Carrier**") shall provide transportation, handling, delivery, and related services (the "**Services**") for the goods described on the face side hereof (the "**Goods**") on behalf of the shipper named on the face side hereof ("**Shipper**"). As part of the Services, Carrier shall deliver the Goods only to the consignee named on the face side hereof ("**Consignee**"). Carrier shall provide the Services pursuant to these terms and conditions, together with the quotations, terms, and conditions contained on the face side of this document (collectively, this "**Bill of Lading**").

APPLICABILITY

This Standard Document aims to be treated as a non-negotiable bill of lading under both:

- The Federal Act, by stating that the goods are to be delivered to a named consignee ([49 U.S.C. § 80103\(b\)\(1\)](#)).
- Article 7 of the UCC, by:

- not stating that the goods are to be delivered to "bearer" or "to the order" of a named person; or
- having a conspicuous legend stating that the bill of lading is non-negotiable.

(UCC § 7-104.)

Motor carrier tariffs may contain additional language that provides that the carrier must treat and handle any bills of lading or shipping instructions tendered to the carrier in the form of a negotiable bill of lading as a non-negotiable bill of lading. This means that:

- Any instructions requesting the carrier to not complete delivery of a shipment until it either secures authorization for delivery from the shipper or surrenders the bill of lading have no effect.
- The carrier is not liable if it delivers a shipment to the consignee listed in the bill of lading.

2. Liability of Carrier.

(a) Carrier or the party in possession of the Goods shall be liable as at common law for any loss or damage to the Goods, except as provided below.

(b) Carrier shall not be liable for any loss of or damage to the Goods or for any delay caused by an Act of God, public enemy, the authority of law, or the act or default of Shipper. [Except in the case of the negligence of Carrier or the party in possession of the Goods,] Carrier or the party in possession of the Goods shall not be liable for loss, damage, or delay which results: (i) when the Goods are stopped and held in transit on the request of Shipper or other party entitled to make such request; (ii) from faulty or impassable highway, or by lack of capacity of a highway bridge or ferry; (iii) from a defect or vice in the Goods, or (iv) from riots or strikes. Carrier or the party in possession of the Goods shall have the burden to prove that it has not acted negligently.

LIABILITY OF CARRIER

Sections 2(a) and (b) are consistent with the Carmack Amendment to the Interstate Commerce Act. The Carmack Amendment:

- Preempts any state law claims that a shipper may have against the carrier where the goods are damaged, lost, or untimely delivered in connection with the interstate shipment of goods.
- Provides the sole and exclusive remedy to shippers for loss or damage in interstate transit.
- Codified the common law rule that imposed near strict liability on freight carriers for damages to goods transported except where they can prove that the damages were caused by:
 - an Act of God, such as a hurricane or earthquake.
 - a public enemy, such as a person or entity that commits a terrorist act.
 - an act or default of the shipper, such as the failure of the shipper to properly pack the goods.
 - an act of a public authority, such as a quarantine or a road closure.
 - an inherent vice or nature of the goods transported, such as spoilage of food, or spontaneous combustion of chemical cargo.

(49 U.S.C. § 14706.)

Under the Carmack Amendment, a shipper that wants to hold a motor carrier liable for cargo damage must show:

- That the goods were in good condition when delivered to the carrier for shipment.
- That the goods were damaged when delivered (or lost before delivery).
- The amount of damages.

(49 U.S.C. § 14706.)

Under the Carmack Amendment, motor carriers are liable for "the actual loss or injury to the property caused" by the carrier, which typically is the difference between the market value of the property in the condition in which it should have arrived at its destination and its actual market

value in the condition in which it did arrive. The Carmack Amendment, however, allows the carrier to limit its liability by including a limitation of liability provision, such as that provided in Section 6 (and supplemented by the extensive pro-carrier limitation of liability provisions typically found in the applicable motor carrier tariff).

Force Majeure

Acts of God are sometimes specifically enumerated in commercial agreements as force majeure events. For more information on drafting and negotiating force majeure clauses generally, see [Standard Clauses, General Contract Clauses: Force Majeure](#) and [Practice Note, Force Majeure Clauses: Key Issues](#).

3. Transportation Schedule. Unless arranged or agreed upon, in writing, prior to shipment, Carrier is not required to transport a shipment by a particular schedule or by a particular date or time, but is responsible to transport the Goods with reasonable dispatch. In case of physical necessity, Carrier may forward a shipment via another carrier.

TRANSPORTATION SCHEDULE

Because Section 3 does not include or refer to any delivery timetable or schedule, the carrier cannot be liable for "delayed shipment" except to the extent that it did not transport the goods with "reasonable dispatch." In general, carriers tend to not commit to a specific timeframe given the uncertainty of delivery conditions, such as road closures.

4. Claims. Carrier shall not be liable if a claim is not filed or a suit is not instituted thereon in accordance with the following provisions:

(a) Claims for loss, damage, or delay must be filed in writing with any participating carrier having sufficient information to identify the shipment.

(b) Claims for loss or damage must be filed within nine months after the delivery of the Goods (or, in the case of export traffic, within nine months after delivery at the port of export), except that claims for failure to make delivery must be filed within nine months after a reasonable time for delivery has elapsed.

(c) Suits for loss, damage, injury, or delay shall be instituted against Carrier no later than two years and one day from the day when written notice is given by Carrier to the claimant that Carrier has disallowed the claim or any part or parts of the claim specified in the notice.

(d) Carrier will have the full benefit of any insurance policies or contracts claimant has in effect on the Goods; provided that Carrier receiving the benefit of such insurance must reimburse the claimant for the premium paid on the insurance policy or contract.

CLAIMS

Most bills of lading provide for the time limit of nine months allowed in the Carmack Amendment for filing a claim against the carrier and the time limit allowed in the Carmack Amendment of two years for bringing a civil action against the carrier after the carrier notifies the claimant that its claim has been denied ([49 U.S.C. § 14706\(e\)](#)).

5. Goods not Delivered.

(a) If Consignee refuses the shipment tendered for delivery by Carrier or if Carrier is unable to deliver the Goods, because of fault or mistake of Shipper or Consignee, Carrier's liability shall then become that of a warehouseman. Carrier shall promptly attempt to provide notice, by telephonic or electronic communication as provided on the face of this Bill of Lading, if so indicated, to Shipper or the party, if any, designated to receive notice on this Bill of Lading. Storage charges, based on Carrier's tariff, shall start no sooner than the next business day following the attempted notification. Storage may be, at Carrier's option, in any location that provides reasonable protection against loss or damage. Carrier may place the shipment in public storage at Shipper's expense and without liability to the Carrier.

(b) If Carrier does not receive disposition instructions within 48 hours of the time of Carrier's attempted first notification, Carrier will make a good faith effort to issue a second and final confirmed notification. Such notice shall advise that if Carrier does not receive disposition instructions within 10 days of that notification, Carrier may offer the Goods for sale at a public auction and Carrier has the right to offer the Goods for sale.

(c) The amount of sale will be applied to Carrier's invoice for transportation, storage, and other lawful charges. Shipper shall be responsible for the balance of charges not covered by the sale of the Goods. If there is a balance remaining after all charges and expenses are paid, such balance will be paid to the owner of the Goods sold hereunder, upon claim and proof of ownership.

(d) Where Carrier has attempted in good faith to follow the procedure set forth in subsections 4(a), (b) and (c) above to dispose of the Goods and has been unable to do so, Carrier may, at its option, sell the Goods under such circumstances and in such manner as may be authorized by law.

(e) When the Goods consist of perishable goods that cannot be delivered and disposition directions are not received by Carrier within a reasonable time, Carrier may sell the Goods at private or public sale.

(f) Where Carrier is directed by Shipper or Consignee to unload or deliver Goods at a particular location where Shipper, Consignee, or the agent of either, is not regularly located, Carrier shall have no liability for the Goods after unloading or delivery at such location.

GOODS NOT DELIVERED

This provision provides contractual exceptions for liability of the carrier to deliver the goods that are similar to the exceptions provided a common carrier in the Federal Act, which covers:

- Delivery compelled by legal process.
- Goods sold lawfully to satisfy the carrier's lien.
- Goods that have not been claimed.
- Goods that are perishable or hazardous.

(49 U.S.C. § 80111(d).)

6. Limitations on Carrier's Liability. In all cases not prohibited by law, where a lower value than the actual value of the Goods has been stated in writing by Shipper or has been agreed upon by Shipper in writing as the released value of the Goods as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount of Carrier's liability for loss or damage, whether or not such loss or damage occurs from Carrier's negligence.

LIMITATIONS ON CARRIER'S LIABILITY

The Carmack Amendment allows the carrier to limit its liability by including a limitation of liability provision, such as that provided in Section 6. Carriers typically further limit their liability for cargo loss or damage in their motor carrier tariffs, for example, by including provisions that:

- Cap the amount of damages recoverable to a maximum amount and not to exceed the lesser of, for example, the:
 - specified amount per unit of weight;
 - specified amount per shipment; and
 - actual invoice value of the items lost, damaged, or destroyed.
- Limit the type of damages recoverable, such as a restriction against the recovery of consequential or incidental damages.

A limitation on the recovery of consequential damages, for example, may impact a shipper in an industry that requires "just in time" delivery of parts. A failure to timely deliver in that case is likely to have consequences in terms of lost man hours, plant efficiencies, and delayed shipments to customers. Unless the carrier assumes greater liability by contract, it is not required to pay for air express replacement parts, waiting construction crews, stopped assembly lines, or any of the other consequences of delayed shipments.

To effectively limit its liability, the carrier should:

- Maintain a tariff that addresses the carrier's liability.
- Give the shipper a reasonable opportunity to choose between two or more levels of liability, including the opportunity to select "excess declared value coverage" for an additional fee specified in the tariff.
- Obtain the shipper's agreement regarding its choice of carrier liability limit.
- Issue a receipt or bill of lading before movement of the shipment that reflects the agreement between the carrier and the shipper.

It is commonly understood that Section 6 aims to limit the carrier's liability under Section 2 for cargo loss or damage and does not address tort claims of third parties, for example, for personal injury or property damage arising from the carrier's actions. The parties should review the motor carrier tariff to determine whether that document attempts to shift tort liabilities from one party to the other using a limitation of liability or indemnification provision. For example, some motor carrier tariffs contain a one-way indemnification by the shipper in favor of the carrier for losses resulting from personal injury or property damage arising from the shipper's negligent acts, omissions, willful misconduct, or violation of law.

For more information about limitation of damages in commercial contracts, see [Standard Clauses, General Contract Clauses: Limitation of Liability](#) and [Damages for Breach of Commercial Contracts Checklist](#).

For more information on drafting and negotiating indemnification clauses, see [Practice Note, Indemnification Clauses in Commercial Contracts](#) and [Standard Clauses, General Contract Clauses: Indemnification](#).

7. Freight Charges.

(a) Shipper or Consignee shall be liable for the freight and other lawful charges accruing on the shipment, as billed or corrected, except that collect shipments may move without recourse to Shipper when Shipper so stipulates by signature or endorsement in the space provided on the face of this Bill of Lading. Nevertheless, Shipper shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed, based upon incomplete or incorrect information provided by Shipper.

(b) Notwithstanding the provisions of subsection (a) above, Consignee's liability for payment of additional charges that may be found to be due after delivery shall be as specified by 49 U.S.C. § 13706(a), except that Consignee need not provide the specified written notice to the delivering carrier if Consignee is a for-hire carrier.

(c) Nothing in this Bill of Lading shall limit the right of Carrier to require the prepayment or guarantee of Carrier's charges at the time of shipment or prior to delivery. If the description of the Goods or other information on this Bill of Lading is found to be incorrect or incomplete, the freight charges that are due will be based upon the Goods actually shipped.

FREIGHT CHARGES

Under the Carmack Amendment, a carrier can adopt a tariff that is applied to shipping rates based on:

- The weight of the goods.
- The value of the goods.
- The mileage required to transport the goods.
- The amount of liability that the carrier is willing to incur for cargo loss or damage (see Section 6).

The carrier typically supplements this provision with detailed provisions in its motor carrier tariff regarding:

- Payment terms, including collection fees, service charges, and other fees for delayed payment, non-payment, or returned check.
- The right to withhold delivery for delayed payment or non-payment.
- Freight fees that apply if the shipment originates from or is destined to specified high cost zip codes, such as the Borough of Manhattan.
- Any fuel surcharge imposed based on fuel reports of the US Energy Information Administration (EIA) or other criteria.

- Additional fees for special services, for example:
 - refrigerated transportation; and
 - expedited or express service.
- Minimum charges for shipments, whether based on volume, density, or other criteria.
- Rates and procedures relating to "collect on delivery (COD)" and prepaid shipments.

For more information on payment terms, see [Standard Clauses, General Contract Clauses: Payment Terms](#). For more information about set-off rights, see [Standard Clauses, General Contract Clauses: Setoff](#) and [General Contract Clauses: No Setoff](#).

8. Items of Extraordinary Value. Carrier will not be required to carry or be liable in any way for any documents, coin money, or articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed on the face side of this Bill of Lading.

ITEMS OF EXTRAORDINARY VALUE

The transportation of valuables may be subject to federal, state, or municipal law. The motor carrier tariff typically contains the carrier's disclaimer of liability, the shipper's indemnification, and additional detailed provisions relating to the transportation of valuables, including:

- Antiques.
- Artwork.
- Currency.
- Jewelry.

9. Explosives, Dangerous, or Hazardous Goods. If Shipper ships explosives, dangerous, or hazardous goods without previous full written disclosure to Carrier of their nature, Shipper shall be liable for and indemnify Carrier against all loss or damage caused by those goods. Carrier may, but shall have no obligation to, warehouse such Goods at Shipper's risk and expense or destroy such Goods without liability to Carrier.

EXPLOSIVES, DANGEROUS, OR HAZARDOUS GOODS

The transportation of dangerous goods may be subject to federal, state, or municipal law. Section 9 contains the shipper's indemnification for damages arising from the shipment of hazardous materials. The motor carrier tariff typically contains the carrier's disclaimer of liability, a more detailed shipper's indemnification, an obligation on the shipper to inform the carrier of the nature of the goods, and additional detailed provisions relating to the prohibited or restricted items, including:

- Animals.
- Asbestos.
- Explosives.
- Guns.
- Hazardous waste, including medical waste.

10. Substitute or Replacement Bill of Lading. If this Bill of Lading is issued on the order of Shipper or its agent, in exchange or in substitution for another bill of lading, Shipper's signature on the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability will be considered a part of this Bill of Lading as fully as if the signature was made on this Bill of Lading.

SUBSTITUTE OR REPLACEMENT BILL OF LADING

This provision establishes that in the situation where a substitute or replacement bill of lading is issued, for purposes of determining liability the shipper's declaration of value or election of liability on the original bill of lading continues to apply regarding the substitute bill of lading.

11. Transportation by Water. If all or any part of the Goods is carried by water over any part of the route, such water carriage shall be performed subject to the terms and provisions and limitations of liability specified by the "Carriage of Goods by Sea Act" and any other pertinent laws applicable to water carriers.

TRANSPORTATION BY WATER

Special rules apply to water carriage. For example the Carmack Amendment provides that the liability of a water carrier is determined by its bill of lading and the law applicable to water transportation. Common carriers engaged in the transportation of property other than livestock and wild animals by water that are subject to the Interstate Commerce Act, must use bills of lading prescribed by [49 C.F.R. Section 1035.1\(a\)](#).

The Carriage of Goods by Sea Act (COGSA) is automatically enforced in international transportation of goods, but not in transportation of goods domestically unless the carrier agrees to be bound by the COGSA (46 U.S.C. App. §§ 1300 to 1315 (1997)). The COGSA generally provides that a ship owner's liability is limited to \$500 per shipping package and it stipulates a one-year time limit for filing suit against the Carrier.

12. Alterations and Additions. Any alteration, addition, or erasure in this Bill of Lading made without the special notation of Carrier will be without effect, and this Bill of Lading will be enforceable according to its original tenor.

ALTERATIONS AND ADDITIONS

As a contract between parties, any alteration or addition to a bill of lading after it has been issued by a carrier is not enforceable, unless the alteration or addition has been authorized by the carrier in writing or noted by carrier on the bill of lading. Notwithstanding any alteration or addition that is not enforceable, the original terms of the bill generally is enforceable.

PRODUCTS

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