Regulatory Analysis Summary: Strengthening offences and penalties under the Smokefree Environments and Regulated Products Act 1990

Decision sought	In principle Cabinet decisions on strengthening offences and penalties under the Smokefree Environments and Regulated Products Act 1990 (SERPA)
Agency responsible	Ministry of Health
Portfolio Minister(s)	Hon Casey Costello
Date finalised	10 September 2026
Ministry for Regulation ID number	REG-2365

Brief description of the Minister's regulatory proposal (preferred option)

The Minister proposes to introduce new offences and increased penalties for breaches of regulatory requirements for tobacco packaging and small quantity sales, and to strengthen the consequences of noncompliance for a specialist vape retailer's approval.

Summary of the problem definition

The illicit tobacco market in New Zealand is changing and is increasingly associated with organised criminal activity. The illicit market undermines the effectiveness of tobacco control measures, adversely effects legitimate businesses and reduces Crown revenue.

Non standardised packaging is a strong indicator of an illicit tobacco product. Standardised packaging reduces the attractiveness of tobacco products, makes health warnings more noticeable and effective, reduces false perceptions about some products being safer, and contributes to reduced smoking. In addition to undermining the effectiveness of packaging regulations, illicit products are sold at a significantly lower price. The high price of tobacco products (achieved via excise tax) is the single most effective tobacco control measure for reducing smoking. Young people are particularly responsive to price. Discounted price therefore further undermines public health efforts to prevent uptake of smoking among young people and to encourage smokers to quit.

Aspects of the current Smokefree Environments and Regulated Products Act 1990 (SERPA) enforcement framework are inefficient and ineffective, with a limited range of responses to illicit and non-compliant tobacco activity. Enforcement officers can provide education, issue infringement notices for a limited set of offences, or pursue prosecution for ongoing or large-scale offending. The gap between infringement notices and prosecution can make enforcement impractical for clear but lower-level breaches, and current penalties may not adequately deter deliberate or repeat offending.

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Section 51 of the Act establishes an offence in respect of standardised packaging and section 53 in respect of minimum quantities of tobacco. The structure of these offences differs, as does the penalty levels. This creates problems as small quantities of tobacco are highly likely to also be in noncompliant packaging. This leads to a lack of clarity as to which enforcement pathway to pursue.

Summary of options considered for addressing the problem

The options considered are:

- the status quo
- strengthening SERPA offences and penalties
- the second option plus broader supply-chain and market controls
- deregulation.

The preferred option is to strengthen SERPA offences and penalties. Broader supply-chain and market controls are not preferred at this stage because they require further policy development, consultation, legal analysis and implementation planning.

Is the Minister's preferred option in the Cabinet paper the same as the preferred option in the RAS?

Yes

Summary of the main benefits of the Minister's preferred option

The main benefits are a more effective, graduated and proportionate enforcement pathway, stronger deterrence for non-compliance, and reinforcement of the Smokefree goal by addressing access to cheap illicit tobacco, within the existing SERPA framework.

Summary of the main costs of the Minister's preferred option

The main costs are implementation and ongoing compliance and enforcement costs for the Ministry of Health and Health New Zealand, including the costs of investigation and prosecution, operational guidance, training, communications, monitoring and coordination with Customs and Police.

Does the RAS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

Yes, subject to implementation. The benefits are expected to outweigh costs if the strengthened legislative tools are supported by sufficient enforcement capability, operational guidance, training and clear enforcement criteria. Without those supporting settings, stronger offences and penalties alone may not materially improve outcomes.

Have any potential inconsistencies with the principles of responsible regulation in the Regulatory Standards Act been identified in relation to the Minister's preferred option?

Potential issues relate to proportionality, fairness, consistency of enforcement and rights implications, particularly where penalties are increased or strict liability offences and suspension or cancellation powers are introduced. These issues will need to be managed through careful drafting, clear statutory thresholds, operational guidance and continued engagement with the Ministry of Justice, including consideration of NZBORA implications.

Limitations and constraints on analysis

Condensed timeframes	Yes	Constrained option set	No
Legislative constraints	No	Data and evidence gaps	Yes
Ministerial direction	No	Other	No
Limited public consultation	Yes		

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Summary of limitations and constraints on analysis

This analysis was prepared in a short timeframe. There has been consultation with government agencies, but no opportunity in the timeframe for public consultation.

The analysis relies on available evidence and operational judgement about the nature of the illicit tobacco market, existing SERPA enforcement settings, and likely compliance responses. Evidence on the size, characteristics and trajectory of New Zealand's illicit tobacco market remains limited.
The expected benefits of stronger offences and penalties cannot be quantified. The effectiveness of the preferred option will depend on sufficient frontline enforcement capability, clear operational guidance, training, consistent enforcement criteria, and effective coordination with Customs and Police.

Legal and proportionality issues will need to be worked through during drafting, particularly in relation to higher penalties, strict liability offences, suspension or cancellation powers, and any NZBORA implications.

What are the implications of these limitations and constraints, and what has been done – or will be done – to mitigate and manage them?

These limitations mean the RAS provides a qualitative assessment of likely impacts rather than a quantified cost-benefit analysis. These limitations have been mitigated by drawing on available enforcement information, government agency input, and Ministry operational judgement.
Further mitigation will occur through legislative drafting, operational guidance, training, monitoring of enforcement activity, and future potential policy work on broader controls.

I am satisfied that, given the available evidence, this RAS represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager signature: 

Barbara Burt
Manager, Public Health Strategy and Policy
Public Health Agency and Mental Health Group
Ministry of Health
10 September 2026

Quality Assurance Statement	
Reviewing Agencies: Health	**QA rating: Partially met**

Panel Comment:

The RAS was reviewed by a panel with members from the Ministry of Health and the New Zealand Customs Service. The panel considers the RAS partially meets the QA requirements. It is reasonably clear and concise but does not adequately consider the costs and benefits of the options, or implementation issues.

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Section 1: Diagnosing the policy problem

What is the policy problem?

1. The current domestic compliance and enforcement framework under the SERPA does not provide a sufficiently flexible or graduated response to illicit and non-compliant tobacco activity. Enforcement officers can provide education, issue infringement notices for a limited set of offences, or pursue prosecution for repeated or large-scale offending. The gap between infringement notices and prosecution can make enforcement impractical for clear but lower-level breaches, and current penalties may not adequately deter deliberate or repeated offending.

2. As an example, SERPA lacks packaging-specific infringement and strict liability offences. As non-compliance with standardised packaging and labelling requirements are a strong indicator of an illicit tobacco product, Health lacks tools to deter retailers from selling illicit tobacco. An infringement offence would provide for an immediate deterrent for minor packaging breaches where prosecution would be ineffective and disproportionate. A strict liability offence would provide an incentive for regulated parties to adopt appropriate precautions to prevent breaches of the law. Enforcement is currently inefficient and ineffective as a prosecution for a knowledge-based offence is the only option to intervene when alternative responses, if they were available (ie, an infringement offence and a strict liability offence), would better suit a particular situation.

3. The illicit tobacco market in New Zealand is changing and is increasingly associated with organised criminal activity. The availability of low-cost illicit tobacco can reduce incentives for people who smoke to quit or switch to less harmful alternatives, make smoking more affordable for young people, undermining the Smokefree goal, adversely affecting legitimate businesses, and reducing Crown revenue.

What objectives are sought in relation to the policy problem?

4. The overarching objectives are to reduce smoking rates and strengthen the domestic compliance and enforcement framework under SERPA so that illicit and non-compliant tobacco activity can be deterred and addressed more effectively and proportionately.

5. These objectives are informed by the purposes of SERPA, including protecting the health of people who smoke and the wider public, discouraging children and young people from taking up smoking or using other products regulated under SERPA, supporting people who smoke to quit, and providing an effective regulatory framework for tobacco and regulated products.

What external consultation has been undertaken?

6. Targeted consultation has been undertaken with relevant government agencies including Customs, New Zealand Police and the Ministry of Justice. Consultation, particularly with the Ministry of Justice, has assisted in refining the preferred option outlined in Section 2.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options with the status quo?

7. The options are assessed against four criteria that reflect the purpose of this package: effectiveness, efficiency, proportionality, and workability and implementation readiness.

8. These criteria reflect the core regulatory gap identified in Section 1: SERPA does not currently provide a proportionate pathway from education, to infringement, to

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prosecution for the range of noncompliance now arising, resulting in an enforcement response that can be inefficient and ineffective.

What scope will options be considered within?

9. The analysis focuses on options for strengthening the domestic SERPA compliance and enforcement framework. The options range from retaining the existing SERPA offences and penalties, to strengthening those tools within the current framework, to a broader future package that would also address broader supply-chain and market controls.

What options are being considered?

Option One – Status Quo/Counterfactual

10. Under the status quo, there would be no change to the SERPA offences and penalties, including that are most closely related to illicit tobacco products would be retained. The Ministry of Health and Health New Zealand would continue to rely on education and advice, infringement notices for a limited set of offences, and knowledge-based prosecution for more serious offending.

11. Key gaps that limit the ability to address illicit tobacco and non-compliant activity include:

- the lack of an infringement offence for breach of standardised packaging requirements
- the lack of a strict liability offence for breach of standardised packaging requirements
- the lack of alignment between offences and penalties under two closely related sections of the Act (s 51 which relates to minimum quantities of tobacco and s53 which relates to standardised packaging), where there is often a breach of both offences (eg, a single cigarette in a paper bag)
- penalties that are insufficient to deter sales of illicit tobacco, which is highly profitable.

Option Two – Strengthen the SERPA offences and penalties most closely related to illicit tobacco

12. Option Two would strengthen the SERPA offences and penalties that are most closely related to illicit tobacco. It would:
    - introduce new infringement and strict liability offences for breach of standardised packaging requirements
    - increase the maximum penalty for the existing knowledge-based offence for breach of standardised packaging requirements
    - align the offences and penalties for small quantity sales of cigarettes and loose tobacco with those for breach of standardised packaging requirements
    - strengthen the consequences for specialist vape retailers who breach the Act and its Regulations.
13. This option would create additional and increased options where there are currently gaps in enforcement tools (eg, it would consider the intersection of jurisdictions between Health, Police and Customs). It would improve the domestic retail enforcement response to illicit trade in tobacco, while maintaining existing roles for Customs and Police in relation to border, customs and organised crime matters.

14. The table below shows the changes proposed under Option Two in comparison to the status quo, as well as the rationale for these changes.

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Section of SERPA	Status quo	Proposed change	Rationale
51	No infringement offence for breach of standardised packaging requirements.	Add infringement offence for breach of standardised packaging requirements, with an infringement fee of $2,000.	Provides an immediate deterrent for minor packaging breaches where prosecution would be inefficient and disproportionate. The intention is infringement notices would only be issued to manufacturers, importers, distributors, or retailers (rather than employees). The $2,000 fee is equivalent to existing fees for infringement offending by manufacturers, importers, distributors, or retailers for selling to minors, visibility, and supplying disposable vape breaches, which were all introduced or amended in recent years.
51	No strict liability offence for breach of standardised packaging requirements.	Add a strict liability offence for breach of standardised packaging requirements, with maximum penalties lower than the existing knowledge-based offence: $200,000 for manufacturers / importers / distributors or $70,000 where the contravention relates to vaping products or smokeless tobacco, $70,000 or large retailers or $40,000 where the contravention relates to vaping products and smokeless tobacco; and $40,000 or $5,000 where the contravention relates to a vaping product or smokeless tobacco product in any other case.	Provides for prosecution option without the further evidential burden of proving knowledge. This makes the offence consistent with other offending in the Act and deters conduct harmful to health. Proposed fines are lower than for a knowledge-based offence and adopt the existing differentiated penalty structure based on supply chain role and product type. A defence of reasonable excuse would be provided. A strict liability offence is appropriate because there is a need to provide an incentive for people who undertake those activities to adopt appropriate precautions to prevent breaches of the law.

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Section of SERPA	Status quo	Proposed change	Rationale
51 (2)(c)(i)	$50,000 maximum penalty for knowledge-based offence “in any other case”.	Increase maximum penalty for knowledge-based offence “in any other case” to $100,000.	Increases deterrence for serious or repeated non-compliance by retailers with a turnover of less than $50 million, while keeping penalties proportionate to the role of the person or business in the supply chain, and the product type. This also maintains proportionality with other offences in the Act that do not require mens rea but have a similar penalty.
53	$200 infringement fee and $2,000 maximum fine for small quantity sales of cigarettes and loose tobacco.	Align the offence structure and set infringement fee and maximum fines for small quantity sales of cigarettes and loose tobacco with those proposed for section 51 (standardised packaging) offences.	Resolves the current situation where both sections of the Act (with vastly different penalties) apply to a particular conduct (eg, sale of a single cigarette in a paper bag is a breach of packaging requirements and of the small quantity provisions)
20Q	No specific requirement in specialist vape retailer approval process requiring compliance with SERPA and regulations.	Amend the general conditions applying to specialist vape retailer approvals to require compliance with the Act and Regulations, so that serious or repeated noncompliance can be addressed through the existing suspension and cancellation provisions in section 20Q.	Provides for the suspension or cancellation of an approval where non-compliance with the Act or Regulations is found to have occurred so that persons who hold and profit from approvals are incentivised to act lawfully, including by not selling illicit tobacco.

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Option Three – Option Two plus broader supply-chain and market controls

15. Option Three would combine the strengthened offences and penalties in Option Two with broader supply-chain and market controls, such as expanded cross-agency enforcement mechanisms.

16. This option may provide a more comprehensive system-wide response over time, but it would require further policy development, consultation, legal analysis, funding and detailed implementation planning.

Option Four – Deregulation

17. Option Four would reduce or remove selected SERPA controls and associated enforcement requirements. This could include narrowing existing offences, reducing penalties, or removing some regulatory obligations for tobacco retailers or suppliers.

18. This option would reduce the regulatory burden for regulated parties and may reduce some enforcement costs. However, it would be unlikely to address the identified problem and could weaken deterrence, reduce compliance incentives, and increase risks to the Smokefree goal.

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How do the options compare with the status quo/counterfactual?

	Option One – Status quo / counterfactual	Option Two – Strengthen SERPA offences and penalties	Option Three – Option Two plus broader supply-chain and market controls	Option Four – Deregulation
Effectiveness	0 No change means existing problems with the enforcement framework that make it difficult to address breaches of packaging requirements would continue.	+ Improved graduated compliance tools combat non-compliance and illicit trade by reinforcing standardised packaging, pricing signals and retail compliance. This would improve the response where illicit or non-compliant products are detected in domestic retail settings but would not by itself address any gaps in upstream importation, organised supply chains or excise evasion.	++ A broader supply chain and market control package could further combat illicit trade. Its impact would depend on detailed design, enforcement capability, compliance and funding.	- - Reducing or removing controls would be likely to weaken the response to illicit or non-compliant tobacco and could increase risks to the Smokefree goal.
Efficiency	0 The present gap between education, limited infringement notices and prosecution remains, making enforcement less efficient where prosecution is disproportionate or resource intensive.	++ Creates lower-cost enforcement options that can be used without defaulting immediately to prosecution.	+ Could improve system efficiency over time, but broader controls would add complexity, implementation costs and cross-agency coordination requirements.	+ May reduce some compliance and enforcement activity, but efficiency gains would come at the cost of weaker regulatory tools.
Proportionality	0 The current framework does not provide a sufficiently graduated set of responses for lower-level, repeated and serious offending.	++ Provides a more graduated pathway from education and advice to infringement action, to prosecution for more serious offending.	+ Could support a more comprehensive response, but broader controls may raise additional proportionality and rights questions.	- Would reduce the ability to tailor enforcement responses to the seriousness, frequency and commercial nature of non-compliance.

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	Option One – Status quo / counterfactual	Option Two – Strengthen SERPA offences and penalties	Option Three – Option Two plus broader supply-chain and market controls	Option Four – Deregulation
Workability and implementation readiness	0 No legislative or implementation change is required, but operational limitations remain.	+ Can be implemented within the existing SERPA framework, but will require operational guidance, training, communications and sufficient enforcement capability.	- Requires further policy work, consultation, legal analysis, funding and cross-agency implementation planning before decisions can be made.	+ May reduce some compliance and enforcement obligations, but legislative change would still be required, and the option would not resolve the identified enforcement gap.
Overall assessment	0	++	+	-

Key for qualitative judgements

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

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19. The preferred option from this analysis is Option Two: strengthening SERPA offences and penalties. This option provides the most straight-forward improvement over the status quo by creating a more graduated enforcement framework, strengthening deterrence, and improving domestic retail enforcement. This option also works within the existing framework, meaning it can be implemented more readily.

20. Option Three may offer a more comprehensive system-level response over time, but it is not preferred for this decision because it requires further policy development, consultation, legal analysis, implementation planning and funding decisions. It is better suited to a future tranche of work. Option Four is also not preferred because deregulation would not address the enforcement gap identified in this analysis and would risk weakening deterrence and compliance incentives.

Section 3: Cost-benefit analysis

What are the additional costs and benefits of the preferred option in the Cabinet paper?

21. We are unable to quantify the overall costs and benefits of the preferred option. The scale of the illicit tobacco market, the likely behavioural response to stronger penalties, and the level of additional compliance activity required cannot be estimated with confidence from the available evidence. Implementation costs, fiscal impacts and funding options will be assessed alongside policy and legislative work resulting from Cabinet decisions, with any financial implications reported to Cabinet by July 2027.

22. The main benefits are expected to be stronger deterrence, more proportionate enforcement responses, improved domestic retail enforcement capability, better support for legitimate businesses, and reinforcement of the Smokefree goal (with subsequent reduced harm) by addressing access to cheap illicit tobacco.

23. The main costs are implementation and ongoing compliance and enforcement costs for the Ministry and Health New Zealand, including legislative drafting support, operational guidance, training, communications, monitoring and coordination with Customs and Police.

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Table 1: Cost-Benefit Analysis

Nature of the benefit/cost to New Zealand	Dollar value of impact (or quantified impact)	Scale of unquantifiable impact	Nature of impact – one-off or ongoing	Source of evidence
Additional benefits of the preferred option compared with taking no action				
Improved deterrence	Not quantified	Medium	Ongoing	
Graduated enforcement response	Not quantified	Medium	Ongoing	
Support for legitimate businesses and Smokefree objectives	Not quantified	Minor to medium	Ongoing	
Total annual benefits	Not quantified	Medium	Ongoing	
Additional costs of the preferred option compared with taking no action				
Implementation costs	Not quantified	Minor to medium	One-off	
Rights and proportionality risks	Not quantified	Minor to medium	Ongoing	
Total annual costs	Not quantified	Minor to medium	Ongoing	
Net impacts compared with taking no action				
Total annual benefits minus costs	Not quantified			
Total one-off benefits minus costs	Not quantified			

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Are the benefits of the preferred option in the Cabinet paper expected to exceed the costs?

24. The benefits of the preferred option are expected to exceed the costs, subject to effective implementation. The key caveat is that the benefits depend on sufficient enforcement capability, clear operational guidance, training and consistent enforcement criteria. This risk can be mitigated through resourcing decisions, operational guidance, monitoring and continued coordination with Customs and Police.

25. The proposal should improve the ability of the Ministry of Health and Health New Zealand to respond proportionately to lower-and mid-level breaches without defaulting immediately to prosecution. It should also strengthen deterrence for deliberate or repeated offending where substantial profits may be made from unlawful activity.

What are the impacts on different groups of the preferred option compared with taking no action?

26. Māori, Pacific peoples, disabled people and people living in areas of high deprivation experience disproportionate tobacco-related harm. To the extent that stronger enforcement reduces access to illicit tobacco and contributes to lower smoking prevalence, these groups may benefit.

27. The scale of the effect is uncertain because evidence on the size and trajectory of the illicit tobacco market remains limited. The proposal is more likely to reduce than increase inequities if it improves compliance with tobacco control measures and reduces access to cheap illicit tobacco.

28. Regulated parties will face stronger consequences for non-compliance and increased regulatory scrutiny. Legitimate retailers and suppliers may benefit from a stronger response to unlawful competition from illicit tobacco.

29. The Ministry of Health and Health New Zealand will face implementation and enforcement impacts. These will need to be managed through operational planning, guidance, training and coordination with Customs, Police and the Ministry of Justice.

Conclusion

Which option is the most effective, efficient and proportionate response to the problem?

30. Option Two is the most effective, efficient and proportionate response to the identified problem. It strengthens SERPA offences and penalties within the existing legislative framework.

31. It is the most effective option because it directly addresses the core regulatory gap: the current framework does not provide a sufficiently graduated pathway from education and advice to prosecution for serious or repeated offending. The addition of new and increased offences provides an additional layer of tools to deter the sale of illicit tobacco and non-compliance within the current framework.

32. It is the most efficient option because it can be implemented within the existing SERPA framework and focuses on strengthening the domestic compliance and enforcement response rather than creating a broader regime at this stage. This avoids premature complexity while still improving the tools available to the Ministry of Health and Health New Zealand.

33. It is proportionate because it provides a more graduated set of enforcement responses while preserving the option of prosecution for more serious offending. Rights and proportionality risks can be managed through careful legislative design, clear statutory

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thresholds, operational guidance, training, and continued engagement with the Ministry of Justice.

Section 4: Delivering an option

What are the next steps for implementing the legislation?

34. Implementation will require legislative amendments to SERPA to give effect to the strengthened offences and penalties. This will include detailed drafting of additional infringement offences, revised infringement fees and maximum penalties, strict liability offences for specified regulatory breaches, and approval suspension or cancellation consequences for persistent or serious non-compliance by a specialist vape retailer.

35. The Ministry will need to work with the Parliamentary Counsel Office and the Ministry of Justice during drafting to ensure the proposals are legally robust, proportionate, and consistent with rights obligations, including consideration of NZBORA implications.

36. Operational implementation will require updated enforcement policies, procedures and guidance. Health enforcement officers will need clear enforcement criteria to support consistent decisions about when to use education, infringement notices, suspension or cancellation powers, and prosecution.

37. Training will be required for enforcement officers and relevant operational staff. Communications and guidance will also be needed for regulated parties so that retailers, suppliers and other affected parties understand the strengthened obligations, the consequences of non-compliance, and how the enforcement framework will operate.

38. Coordination with Customs and Police will be important to preserve clear agency roles and support referrals where offending involves border, customs, organised crime or other serious matters.

How will the proposal be monitored, evaluated, and reviewed?

39. The proposal will be monitored through routine regulatory assurance, compliance and enforcement reporting. Monitoring should track how the strengthened tools are used in practice, including education activity, infringement notices, enforcement decisions, prosecutions, suspension or cancellation decisions, and referral activity between Health, Customs and Police.

40. Evaluation should consider whether the strengthened framework is improving deterrence, enabling more proportionate enforcement, supporting consistent decision-making, and reducing the availability of illicit or non-compliant tobacco in domestic retail settings. It should also monitor any unintended impacts, including impacts on priority populations and regulated parties.

41. Review of the settings should draw on enforcement data, cross-agency intelligence, implementation feedback, and any available evidence on the size and characteristics of the illicit tobacco market. Findings should inform future decisions on whether broader licensing, supply-chain controls or additional cross-agency enforcement tools are required.

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