

The UPDATE Report



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ASA Fights Against “Secret” Regulations

ASA filed comments with the U.S. Office of the Federal Register (OFR) to support a petition about the U.S. policy on materials that are Incorporated by Reference in U.S. regulations. A key element of discussion was the notion of what does it mean to be “reasonably available” to the public (incorporated materials are required to be made reasonably available so people can know what the law is). A scholar from the Administrative Conference of the United States (ACUS) had petitioned to have the term “reasonably available” defined to mean that the material that is incorporated is made available on the same public terms as the rest of the regulations. ASA’s comments supported the suggestion that incorporated material that is a mandatory part of the regulations should be available for free over the internet, just like the rest of the regulations are made available.

Materials incorporated by reference are familiar to ASA members. Examples of such materials include standards like the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods (published as the IATA Dangerous Goods Regulations). It also includes aviation manufacturers’ instructions that are incorporated by reference in the FAA’s regulations (e.g. in Airworthiness Directives). When these materials are incorporated by reference, they become a required aspect of the regulation into which they are incorporated.

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MESSAGE FROM ASA'S PRESIDENT

THE UPDATE REPORT

is the newsletter of the Aviation Suppliers Association.

OUR COMMITMENT

ASA is committed to providing timely information to help members and other aviation professionals stay abreast of the changes within the aviation supplier industry.

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Dear Colleagues,

It was great to see so many members at the ASA Annual Conference. The combined conference agenda for ASA and the Aircraft Fleet Recycling Association (AFRA) allowed attendees to broaden their knowledge base with coverage on distribution, disassembly and recycling issues.

The Quality Committee started the meeting off with discussions about new guidance from the FAA, documentation, exports and ASA-100. Chris Anderson, MidAmerican Aerospace, and Tim Heckart, Turbine Engine Consultants, led the meeting. Dave Damron, Turbo Resources, is reviewing a proposed change to ASA-100 and will be calling a group together to review the change and submit new language for review at the fall meeting.

On Monday night, ASA presented Chris Anderson as the 2012 recipient of the Edward J. Glueckler Award. Chris has been an active participant in ASA for 15 years. Chris immediately started on the Quality Committee and through the year he has moved from an active participant to the Chairperson. With Chris at the helm of the Committee, the Committee revised ASA-100, commented on several documents and Chris has headed the group that developed a best practice for disposition of unsalvageable aircraft parts. Not only has Chris supported ASA, but his commitment to the industry is notable. Chris regularly mentors new quality personnel and he actively promotes distributor business with local and federal government agencies.

The conference ended with a tour of the Boeing Everett production facility. The tour was coordinated by Greg McGowan, Patti Rockey and Ed Bayne. The group got to walk the production floor and was treated to the executive tour. A special thanks for all the Boeing employees that assisted in making this happen.

Next year's conference will be held July 9-11, 2013 at the Four Seasons Hotel in Las Vegas. ASA and AFRA will be holding a combined agenda with shared access to the meetings.

If you want to read some news stories from the conference, Aviation Week & Space Technology's July 16th issue has articles from the conference.

Take care, Michele

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REGULATORY UPDATE

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The regulations on material incorporated by reference requires those materials be reasonably available to people affected by them, but the regulations don't define "reasonably available." In the days before the internet, materials were incorporated by reference in order to keep down the physical size of the regulations when they were printed. The incorporated materials were separate. It was therefore "reasonable" to pass along some of the production cost of those incorporated materials to consumers. With the advent of the internet, space concerns and production costs are no longer an issue—therefore the reasonable concept of "reasonably available" has changed.

ASA suggested that in order to consider a mandatory requirement "reasonably available," it must be available for free via the internet and the agency's public docket. Agencies are in a position to bargain hard for licensing fees, or elect to develop their own materials if the cost is too high. In some cases, the standard an agency seeks to incorporate may already be available for free. For instance, ASA's ASA-100 Quality System Standard is available for free download (and is incorporated by reference in FAA AC 00-56). The cost of incorporating these materials into mandatory regulations should be covered by our tax burden.

ASA also observed that the costs associated with paying a fee to know the full scope of regulations will disproportionately affect small businesses and individuals, and could have the effect of driving such competitors out of the market based on their inability to comply with "secret" laws, when the incorporated materials are unavailable to the public. Such "secret" laws violated fundamental notions of due process.

You can read ASA's full comments on the ASA website. 

FAA Confirms that Manufacturing DARs May Continue to Issue 8130-3 Tags

On June 11, the FAA released a memo that confirms that Manufacturing DARs continue to have the authority to issue 8130-3 tags (the memo was dated May 31). This has been a source of concern for many DARs and the distributors that rely on them. The memo corrects the concern. The speed with which the FAA corrected this issue shows that FAA headquarters is listening to our industry's concerns and is supporting the industry's needs.

Earlier this year, ASA made the FAA aware of an issue concerning the recent changes to FAA Order 8100.8 (the "D" revision). There was an unanticipated omission of the language that authorized Manufacturing

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REGULATORY UPDATE

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DARs to issue 8130-3 tags for demonstrably airworthy components held by distributors. The new language limited Manufacturing DARs to only working for production approval holders.

ASA asked for a deviation memo to confirm that this change was an inadvertent error.

The new (erroneous) language created a disconnect in the regulations - there was a privilege that persons enjoy under the regulations (obtaining 8130-3 tags when authorized) that would not be supported by the FAA in certain places if Manufacturing DARs were precluded from issuing 8130-3 tags for demonstrably airworthy parts.

14 C.F.R. § 21.327 permits "any person" to apply for an airworthiness approval. Failure to correct the new language in 8100.8D would mean that Manufacturing DARs are precluded from supporting the "any person" language of 21.327. FAA operational norms preclude FAA employees from being available to issue airworthiness approvals for parts in most cases. Thus, a failure to correct this language would mean that in locations that previously relied on Manufacturing DARs to issue 8130-3 tags, the FAA would be unable to meet its 21.327 obligations unless it allocated resources in FAA offices to being able to issue airworthiness approvals to applicants.

ASA argued that it is in the FAA's and industry's best interests to extend the practice of permitting Manufacturing DARs to issue 8130-3 tags for demonstrably airworthy parts held in a distributor's inventory.

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ASA 2013 Annual Conference

*** NEW SCHEDULE ***

Four Seasons Hotel • Tuesday–Thursday • July 9-11, 2013

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ASA also pointed out the historical context of the privilege. Over the past decade, the FAA has established policies that permit Manufacturing DARs and Maintenance DARs to examine a part and its documentation, and where a finding of airworthiness can be made based on this examination, to issue an 8130-3 tag to document that finding.

Originally, these DAR functions were performed under function code 8 for Manufacturing DARs and function code 23 for Maintenance DARs.¹ Although Manufacturing DAR functions are normally limited to PAH facilities, the FAA made a special exception that permitted Manufacturing DARs to issue 8130-3 tags for aircraft parts at independent distributor facilities (NOT at the PAH facility). When this privilege was first issued, the FAA highlighted the fact that this was an exception to the normal rule (under which Manufacturing DARs usually work exclusively at PAH facilities).²

Later, the FAA recognized that the function of issuing domestic 8130-3 tags and the function of issuing export 8130-3 tags required the same skills, and the FAA merged the authority for DARs to issue both domestic and export 8130-3 tags under one function code for each type of DAR. This led to both forms of 8130-3 tags being issued under function code 20 for Manufacturing DARs and function code 32 for Maintenance DARs (these function codes had previously been limited only to export tag privileges).

The new memo returns the industry to the course that the FAA had charted. It explains that the change in Order 8100.8 was inadvertent and that it was not an intent to preclude distributors. It explicitly permits Manufacturing DARs to exercise their 8130-3 issuance privileges for any applicant, including a distributor. 

¹ See, e.g., Procedures for Completion and Use of the Authorized Release Certificate, FAA Form 8130-3, Airworthiness Approval Tag, FAA Notice 8130.70 (June 15, 2001) (permitting the issuance of 8130-3 tags for airworthy parts located at independent distributor facilities).

² Id. at ¶ 5(b) NOTE (stating that "in order to ensure adequate DAR resources to support the activities authorized under this notice, these domestic airworthiness approvals may be issued by either manufacturing or maintenance DARs").

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House Aviation Hearing Focuses on Safety Management

The House of Representatives held a hearing in late April on aviation safety issues; a significant focus of this hearing was on Safety Management Systems (SMS). Both the private sector and the FAA testified about the importance of SMS.

FAA Associate Administrator Peggy Gilligan testified about the FAA's progress on Safety Management Systems (SMS) implementation. Her written testimony is available online at <http://republicans.transportation.house.gov/Media/file/TestimonyAviation/2012-04-25-gilligan.pdf>. Congress passed a law requiring the FAA to implement SMS rules for air carriers. Gilligan explained that the FAA has met its statutory deadlines for proposed SMS rules and that they are on track to be able to use SMS as a holistic tool that will allow industry and the FAA to spot safety trends, and to use these trends to be able to identify potential safety issues and correct them before they can lead to an accident or incident.

Tom Hendricks, the Vice President for Safety, Security and Operations at Airlines for America (formerly the Air Transport Association) agreed about the importance of the data-driven culture that SMS formalizes. He expressed that data driven analysis of SMS "yields a high definition picture" that permits more refined risk assessments. He explained that air carriers have been using data-based programs to identify emerging patterns and promptly deploy focused resources; by proactively initiating change in response to data, rather than reacting to accidents, air carriers have been able to take a disciplined approach that has significantly advanced safety. Hendricks' testimony is available online at <http://republicans.transportation.house.gov/Media/file/TestimonyAviation/2012-04-25-hendricks.pdf>.

Data is at the heart of SMS, and the most effective way to handle SMS is through data sharing, which permits air carriers to have a larger pool of data from which to draw safety conclusions. Scott Foose, the Senior Vice President of Operations and Safety at the Regional Airline Association (RAA) testified before Congress about RAA's efforts to support data sharing.

"When it comes to sharing of safety information, regardless of the size of the fleet or the name on the aircraft, our goal is that all airlines will work together as a team, which will improve safety overall for the industry and most importantly, for our employees and passengers."

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ASA is blogging!

Check out the two blogs on the ASA website:

- **Cavu Café: Royboy's Prose & Cons**
and the
- **ASA Web Log** by Jason Dickstein

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To this end, RAA members have been participating in several data sharing programs that allow individual air carriers to have a much richer data set on which to rely in order to identify trends that can foreshadow safety issues. The testimony of Scott Foose is available online at <http://republicans.transportation.house.gov/Media/file/TestimonyAviation/2012-04-25-foose.pdf>.

While data is an important driver for SMS, it also creates the potential for the data to be misused. At the opening meeting of the FAA's SMS Aviation Rulemaking Committee (ARC), we raised this important issue and the final report from the SMS ARC included draft legislation that we had prepared that would protect SMS data from being disclosed to anyone that might use it for purposes other than safety. The reason that this data protection is important is because if the data can be used for other purposes, like litigation, or embarrassing companies in the press, then this will tend to have a chilling effect on honest reporting. If the data is not reported honestly (even when honesty is unpopular or embarrassing), then it may not serve its safety purpose.

The subject of data protection was a major part of the testimony of Sean Cassidy, the First Vice President of the Air Line Pilots Association:

“Processes in place to protect the data gathered through various [means] need to be strengthened and expanded to provide proper protection for the data, both within and outside an organization. Legislation should be considered to further strengthen the protection of this vital source of safety information against misuse.”

Sean Cassidy's written testimony is available online at <http://republicans.transportation.house.gov/Media/file/TestimonyAviation/2012-04-25-cassidy.pdf>.

Data protection is not the only challenge facing FAA and industry in establishing SMS programs for air carriers. Gerald Dillingham of the Government Accountability Office (GAO) testified before Congress about the data challenges facing the FAA in developing the system necessary to support SMS. Dillingham's testimony is available online at <http://republicans.transportation.house.gov/Media/file/TestimonyAviation/2012-04-25-dillingham.pdf>. The data challenges he identified include:

- Changes to reporting policies that could result in changes to data that reflect changes in reporting trends rather than actual changes in the safety issues that are represented by the data
- Incomplete data that makes it difficult to account for all appropriate risks
- Lack of coordination among data systems that makes it difficult to correlate data
- Data reliability question, and
- Lack of data on certain types of incidents

Dillingham applauded the FAA for its efforts, but expressed that more work needs to be done to address the challenges that his organization has identified.

Similar shortcomings were identified in the testimony of Jeffrey Guzzetti, the Assistant Inspector General for Aviation and Special Programs from the Department of Transportation's

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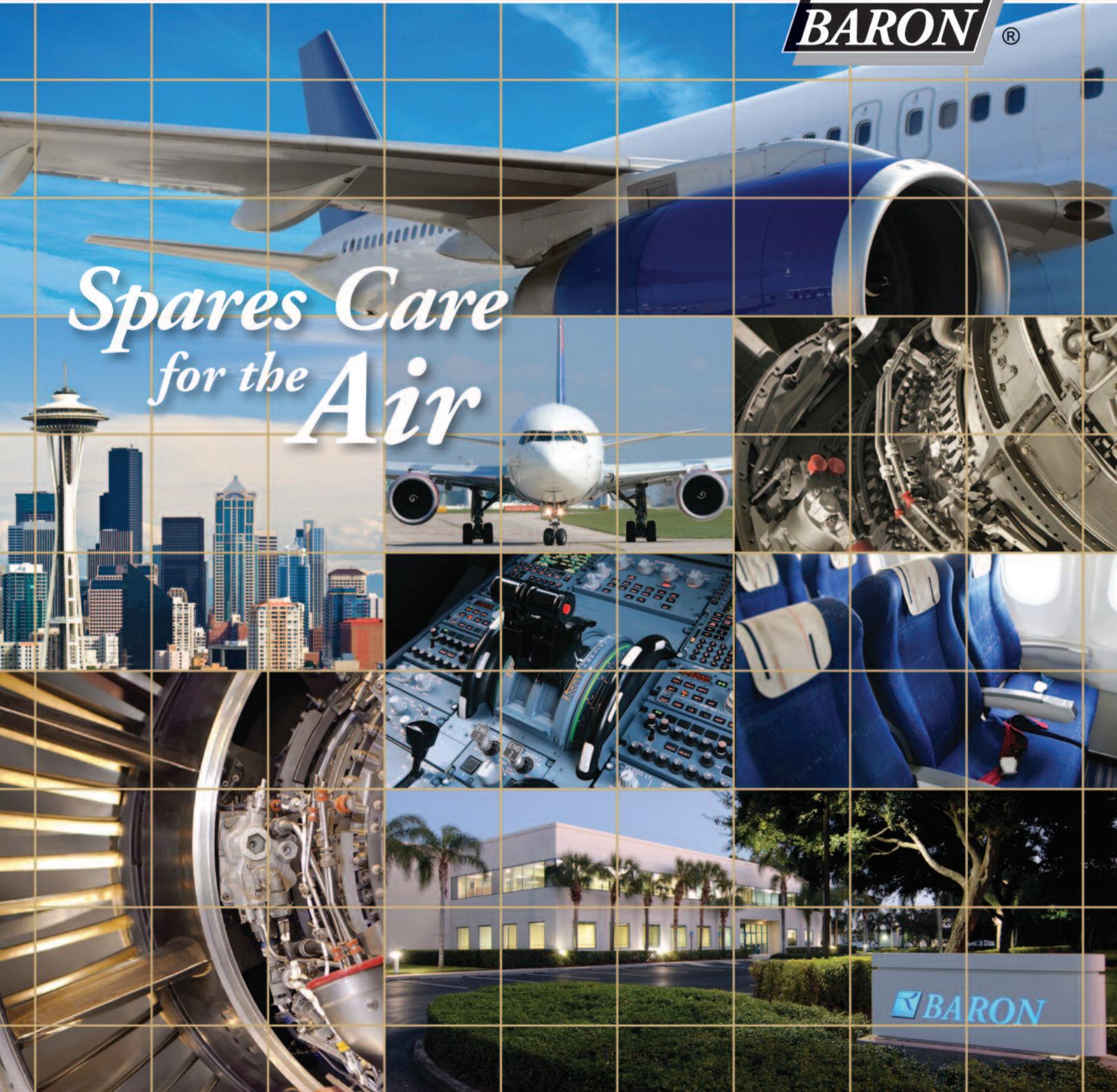
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The graphic features a blue header with the text 'ASA Social Media'. Below the header are three social media links: Facebook, Twitter, and LinkedIn. To the right of the links are several colorful icons representing social media and communication, including a speech bubble, a person icon, a thumbs up icon, and a RSS icon.

- *Commercial Aircraft Spares Report*
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Spares Care for the Air



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Office of the Inspector General. Guzzetti's written testimony is available online at <http://republicans.transportation.house.gov/Media/file/TestimonyAviation/2012-04-25-guzzetti.pdf>. Guzzetti explained that the FAA has had problems collecting data, and optimally using the data that it does collect. For example, he notes:

“FAA has not finalized the process to effectively communicate [Air Traffic Safety Action Program] ATSAP data to facility managers so that safety improvements can be made at the facility level. FAA has also not effectively communicated and implemented changes to performance management under ATSAP, including assignment of skill enhancement training to controllers. Improvements in these areas would enhance the Agency’s ability to identify and address risks through the use of ATSAP.”

One of the areas that Guzzetti focused on was better use of data for oversight of repair stations. He explained that some FAA employees are simply not using the risk-based tools that headquarters has been providing, and others are going through the motions of using them but they seem to be ignoring the results. He concluded that “to address root causes of safety problems and fully measure their impact, FAA needs to fine-tune its approach to how it collects, verifies, and uses safety data.” 

Suppliers Looking To Expand Their Customer Base Abroad May Soon Have a Larger Potential Market In India

India has historically been a difficult nut to crack. Protectionist tariffs and policies have made it prohibitively costly for suppliers to distribute their products in India. Additionally, India has been slow to develop its MRO infrastructure for any but its largest carriers. This has served to significantly narrow the market for spare parts in the country. However, recent policy shifts now suggest that the India market may be opening up, creating new opportunities for suppliers of aircraft parts.

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A recent report in The Economic Times suggested India has taken initial steps to open itself to expansion in the third-party MRO market. India's 2012-13 budget proposes to exempt spare parts for aircraft and testing equipment for aircraft from customs duties. Current duties can run as high as 30 percent.

Air traffic in India is expected to continue to expand over the next decade according to several estimates. As the number of aircraft in need of MRO increases, the necessity of having localized MRO facilities will also grow. Currently, a substantial amount of MRO is performed outside of the country, in places like Southeast Asia and the Middle East. The ever increasing costs of fuel alone should make local MRO an attractive alternative to flying aircraft out of country for maintenance.

The decrease or elimination of high duties on aircraft parts should open the door to new business in spare parts as India's major carriers bolster their MRO facilities and independent MRO facilities are established. Although some hurdles remain--and budgetary policies are always subject to change--the reduction of import duties is an important step in opening up the growing India aviation market. 

CALENDAR OF EVENTS

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