

Chapter 2

Formal and Informal Approaches to Food Policy

Some in industry may criticize us for using our bully pulpit to encourage companies to do a better job of marketing healthier products to youth. Such criticism would be misguided...A little government involvement—combined with a lot of private sector commitment—can go a long way toward the healthier future for our children that all of us want to see.

(FTC Commissioner Jon Leibowitz, Leibowitz 2008 as quoted in Mello 2010)

2.1 Overview

In the preamble to the U.S. Constitution, the federal government is charged with taking care of the general welfare of the population. One of the population's most basic needs is adequate nutrition. Thus, the federal government has long had a mandate to act on food policy. The first U.S. president, George Washington, who was a large landowner and agricultural experimenter (unsuccessfully) proposed a National Board of Agriculture to Congress. The third president, Thomas Jefferson, who owned a large plantation in Virginia and was a leading agricultural scientist, inventor, and breeder, supported agrarian self-sufficiency as the bedrock of the nation's economy and thus supported low tariffs so that farmers would not pay too much for the supplies and tools they needed. The federal government's first active intervention in agriculture began in the 1830s, through the efforts of Henry Leavitt Ellsworth, a lawyer and farmer who also served as the president of Aetna Insurance Company. Upon being appointed Commissioner of Patents by President Andrew Jackson, Ellsworth began to collect new varieties of seeds and plants from across the nation and agitated Congress to provide funds to support agricultural interests. In 1839 an Agricultural Division was created within the Patent Office and charged with collecting agricultural statistics. The U.S. Department of Agriculture (USDA) was founded in 1862 as a direct descendent of this Patent Office activity, and it has continued to

carry out various research, educational, and regulatory activities up until the present time (Waggoner 1976; National Agricultural Hall of Fame n.d.).

Food policy is complex. It involves many different issues and many different interest groups. Consider, for example, the case of childhood obesity. There are many different players. There is the health care community, including individual doctors, health care provider organizations, insurance companies, public health officials, and public health advocates. While all of these players are interested in healthier children, there are disagreements within this community over costs and responsibilities; for example, individual doctors and public health officials might desire certain types of actions that provider organizations or insurance companies might balk at providing for financial reasons. Another player is the food industry, ranging from farmers, to grocers, food manufacturers, and restaurants—together with their various industry and trade organizations. The food industry is not monolithic in its policy attitudes and actions toward childhood obesity; for example, fast-food restaurants may take positions oppositional to organic farmers. Local, state, and federal governments are torn by conflicts between their interest in public health and their support of various industries, not only including the food industry but also the advertising, media, construction, and transportation industries on such questions as taxation of unhealthy products, First Amendment rights to free commercial speech, and the regulation of the built environment to make cities walking- and bike-friendly. Children spend many hours in school, and principals and school boards have to live with the tension between access to nonhealthy foods in the schools and the loss of revenue from programs sponsored by the food and beverage industries. In order to provide solutions to some of the issues relating to childhood obesity, policymakers must address some of America's thorniest socioeconomic policy issues, such as the lack of access to fresh fruits and vegetables or the underfunded schools in many low-income neighborhoods. Thus, one can see how complex these food policy issues can be.

While we are only able in this brief book to discuss in detail two aspects of the policy fight against childhood obesity—advertising of unhealthy foods to children (on the television and Internet) and unhealthy food in schools—we summarize below the overall policy approach. Before considering policy initiatives, one might ask why the marketplace cannot solve this problem without the intervention of government. Seiders and Petty (2004) identify four market failures related to food choice. They are (using their exact language): lack of disseminated information on the causes and consequences of obesity, the probabilistic and deferred nature of obesity-related harms, lack of accessible and usable nutritional information related to obesity, and the lack of alternative food choices for some consumers.

Three high-level officials at the Centers for Disease Control (Frieden et al. 2010) have provided an excellent overview of formal policy approaches to childhood obesity. Here we draw heavily not only from their account but also from those of several other scholars (Alderman et al. 2007; Seiders and Petty 2004; Anomaly 2012; Schwartz and Brownell 2007; Mello et al. 2006; Sugarman and Sandman 2007; Thaler and Sunstein 2008; Moorman and Price 1989; McGinnis et al. 1999).

Frieden and his colleagues identify three aspects of food policy that can have an impact on childhood obesity. They concern changing the pricing of foods, altering

the public's exposure to different kinds of foods, and changing the image of healthy and unhealthy foods. Pricing policy might include, for example, taxing unhealthy foods to make them more expensive than healthy foods or using agriculture and school meal subsidies to encourage the increase in growth and consumption as well as reduction in cost of healthy food products. Exposure policy might involve, for example, policies that encourage an increase in the number of farmer's markets or supermarkets with fresh fruits and vegetables located in the so-called food deserts that occur commonly in low-income, inner city neighborhoods (and in other places as well) or zoning regulations that limit the density or proximity to schools of fast-food restaurants and convenience stores. Image policy is intended to make healthy foods look more attractive and unhealthy foods less so, such as restrictions on food advertisements to children, providing access to nutritional information on menus in restaurants, and counteradvertising that shows the long-term negative health impacts of regular consumption of highly sweetened beverages.

Policies addressed at increasing children's physical activity also have an impact on childhood obesity. Such policies include changing built environment design (creation of parks, wide sidewalks, and bike lanes) to make walking and biking easier, safer, and more attractive; encouraging children to replace sedentary activities such as television watching and video game playing with more active pursuits; and improving physical education in schools both inside and outside of formal school hours (Khan 2011; Perdue et al. 2003; but also see the other sources listed two paragraphs earlier).

The government also carries out this mission of fighting childhood obesity in other formal ways. These include providing funds for the rigorous assessment of community-level interventions intended to address relevant issues, paying for research on the relationship between diet and health, providing expert assessments of the body of scholarship studying the relationships between diet and health, producing data on consumer behavior as it relates to food and nutrition, offering dietary advice to consumers through tools such as food pyramids and educational campaigns, mandating warning labels or nutritional information on food product packaging, and regulating nutrition claims of food producers (Ippolito 1999, but also see the other sources listed three paragraphs earlier).

2.2 Formal Policy

All three branches of the federal government participate in food policy. In the Executive Branch the most important player is the USDA, which, for example, regulates agriculture, conducts research on food and diet, and provides educational tools such as the food pyramid. However, we will show in Chap. 3 how the Federal Trade Commission, the Federal Communication Commission, and Health and Human Services have each played a role in food advertising regulation. Chapter 4 discusses how the Government Accountability Office (formerly the General Accounting Office) has tracked commercialism, including food commercialism, in the public school system.

Pure Food and Drug Act	1906
Meat Inspection Act	1906
Agricultural Adjustment Act	1933
Commodity Credit Corporation Charter Act	1933
Tennessee Valley Authority Act	1933
Rural Electrification Act	1935
Food, Drug, and Cosmetic Act	1938
National Victory Garden Program	1941
National School Lunch Act	1946
Food for Peace Act	1954
Food Additives Amendment	1958
Food Stamp Act	1964
Child Nutrition Act	1966
Food Stamp Act	1970
National School Lunch Act – Amendments for Supplemental Nutrition for Women, Infants, and Children	1972
Agriculture and Consumer Protection Act	1973
FTC Improvement Act	1980
Nutrition Labeling and Education Act	1990
Food and Drug Administration Revitalization Act	1990
Children’s Television Act	1990
Mickey Leland Childhood Hunger Relief Act	1994
Dietary Supplement Health and Education Act	1994
Personal Responsibility and Work Opportunities Reconciliation Act	1996
Food and Drug Administration Modernization Act	1997
Children’s Online Privacy Protection Act	1998
Food Security and Rural Investment Act	2002
Food and Drug Administration Modernization Act	2007
Food, Conservation, and Energy Act	2008
American Recovery and Reinvestment Act	2009
Healthy, Hunger-Free Kids Act	2010

Fig. 2.1 Important federal laws affecting food policy (sample)

The Congress passes laws that affect food policy. Figure 2.1 presents some of the federal laws over the past 75 years passed by the U.S. Congress that affect food policy.

Congress also acts by performing fact-finding that informs legislation. The principal government agency to carry out this work for Congress is the Congressional Research Service (CRS), which is a unit of the Library of Congress. It conducts legal and policy analyses as directed by Congress. For example, in 2010 the CRS did a data brief on childhood obesity for Congress (Corby-Edwards 2010). At other times, Congress wants to call upon the nation’s scientific expertise. In these cases, Congress often commissions the National Institutes of Health, a private organization that is part of the National Academies of Science, to undertake a study for them. An example discussed in detail in Chap. 3 is a report evaluating 123 peer-reviewed scientific studies on the correlations between food marketing and children’s food preferences, consumption, and health (Institute of Medicine 2005; Lewin et al. 2006).

The judicial branch both enforces the laws and sets regulatory frameworks through case law. In 1993, for example, 623 people in the western United States became ill and four children died from eating undercooked hamburger at Jack in the Box restaurants. Jack in the Box had ignored the warnings from both local health officials and their own employees that they were undercooking their hamburgers; the company did so because it believed that beef patties cooked to the recommended 155° came out too tough. The problematic hamburger they served was tainted with an unfamiliar strain of *E. coli* (O157:H7). In the 18 months following the incidents, the company lost \$180 million and was faced with hundreds of lawsuits from individuals who became sick from consuming these hamburgers. In response, President Clinton called for Congressional hearings on food safety (Marler Clark n.d.).

To forestall government action, Jack in the Box adopted a food safety program known as Hazard Analysis and Critical Control Points, which had first been created by NASA in collaboration with the Pillsbury Company to reduce the risk of contaminated food for astronauts. The new program, which addressed practices at the slaughterhouse, beef in transit, and beef being prepared in the restaurant, greatly reduced illness from this strain of *E. coli*. The USDA Food Safety and Inspection Service Administrator designated the tainted hamburger as *adulterated* under the terms of the Federal Meat Inspection Act. This was the first time the term “adulterated” was used to refer to a microorganism that grew inside a cow; previously it had been applied only to harmful chemicals or foreign objects in food. After first unsuccessfully fighting the USDA in court, the beef industry (in particular, the National Cattleman’s Beef Association and the American Meat Institute) spent more than \$30 million on research to prevent these kinds of outbreaks. The industry tested various methods to kill these microorganisms and finally settled on the use of a technique known as “steam pasteurization,” which had been developed by private industry but was certified in 1995 by the USDA as an approved method. It is a method commonly used, for example, by the large meat processors Tyson and Cargill. Large retailers such as Costco have also insisted on steam pasteurization or other methods that have been shown to be at least as effective (Andrews 2013). A story similar to the Jack in the Box story involves lawsuits related to poisoning from the consumption of raw Gulf oysters tainted with *Vibrio vulnificus* (Buzby and Frenzen 1999).

Even unsuccessful lawsuits can serve as a deterrent to harmful behavior. A good example is the Pelman class action suit against McDonalds for serving foods that lead to obesity. Following the suit, the corporation began to take steps—fitfully implemented—to post signs in its stores presenting nutritional information, remove *trans* fats and reduce saturated fats in its products, and provide more healthy alternative food choices such as apple slices (Mello et al. 2003; for more on lawsuits against food companies, see Meislik 2004).

The food industry can influence policy by using its deep pockets to lobby and advertise. Individuals and public interest nonprofits typically do not have the resources to match particular companies or industry trade organizations in these efforts. Instead, public interest groups use research and educational activities to inform the public, as well as lawsuits. Lawsuits—even if lodged against a particular company—can have the value of bringing public attention to a problem, motivate an entire industry to pay

its fair share of costs, and redirect industry behavior—not just rectifying the actions of an individual company. Lawsuits concerning food policy are sometimes initiated by individuals, but more often they are initiated by public interest groups. For example, in 2006 a lawsuit was filed in the Massachusetts courts by the Center for Science in the Public Interest, Campaign for a Commercial-Free Childhood, and two Massachusetts parents against Viacom and Kellogg for marketing junk food to children (Center for Science in the Public Interest 2006; Nestle 2006).

State and local governments are also involved in setting food policy. For example, sugar-sweetened beverages in the schools are primarily regulated at the state level. Cigarettes are taxed at the state level, with wide variation in the amount of tax from state to state; it is most likely that it would be the states that would be the government body to leverage taxes on unhealthy foods. (See Chriqui et al. 2008 on state tax rates on snacks and sweetened beverages.) Local governments have also participated in food policy such as New York Mayor Michael Bloomberg’s effort to ban the sale of sodas and other sweetened drinks in containers larger than 16 oz (later ruled to be unconstitutional) or San Francisco’s “Happy Meal” law that bans free toys in meals targeted at children that do not meet a high nutritional standard. Local school boards often control the contracts with public schools about how the food industry can advertise and what can be served in vending machines on campus. Greves and Rivara (2006) offer a comparison of the competitive food policies in schools in 19 of the largest cities. Center for Science in the Public Interest (2007) gives a state-by-state review of food policies.

2.3 Informal Policy

Many parties play an informal role in establishing food policy. We have mentioned the role of individual companies and trade associations in lobbying the Executive and Legislative branches of federal, state, and local governments. Chapter 4 discusses former President Bill Clinton’s role in using the bully pulpit to negotiate with the beverage industry to improve the healthiness of drinks available in public schools, while Chaps. 5 and 6 are focused on the use of the bully pulpit by First Ladies Eleanor Roosevelt and Michelle Obama. In a similar way, sports heroes and other celebrities can use their public familiarity as the bully pulpit for reform. For example, Beyoncé has supported Michelle Obama’s initiative to fight childhood obesity; Ellen DeGeneres, Scarlett Johansson, and Jamie Oliver are all trading upon their fame to promote a healthy lifestyle (Conley 2011). Similarly, church authorities can take a position and use the consecrated pulpit as a bully pulpit for food policy. For example, Pastor Rick Warren, an influential California pastor who gave the prayer at the Obama inauguration in 2009, spoke against obesity, arguing for healthy eating and exercise using the “Daniel Plan,” a plan for healthy eating and physical exercise named after the Biblical story of Daniel that was designed by three doctors including the television personality Mehmet Oz (Park 2012).

However, there are many other participants in the food policy debates. Professional organizations (as opposed to trade organizations) are active players.

For example, the American Academy of Pediatrics has written a policy paper on the impact of advertisements on children and adolescents (American Academy of Pediatrics 2006), while the Academy of Nutrition and Dietetics maintains web pages that track food and nutrition in public policy (eatright.org's Food and Nutrition in Public Policy page) and provides tips to the public about eating right (eatright.org's Public page).

Similarly, a number of private foundations and public interest groups have weighed in on the childhood obesity discussions. For example, the Robert Wood Johnson Foundation created the Healthy Kids, Healthy Communities program in 2008 to provide grants to local communities that are used to improve access to healthy foods in food deserts or improve the infrastructure for physical activity in their community (Ohri-Vachaspati et al. 2012; also see Levi et al. 2011 more generally about the Robert Wood Johnson Foundation).

A number of public interest groups are working on issues of food and children. The Rudd Center for Food Policy and Obesity convenes conferences on such topics as food and addiction and provides a clearinghouse for scientific research on food policy and obesity. The Center for Science in the Public Interest has been a watchdog for healthy food since it organized a campaign in 1973 to eliminate nitrates from bacon. The Alliance for a Healthier Generation, founded by the American Heart Association and the Clinton Foundation, brokers deals with companies and industries to improve the foods served in schools and also operates science-based programs in after-school environments (e.g., clubs and community centers) to improve healthy eating and physical activity in these places. The Alliance's work involves, for example, taking public stands on federal guidelines on snacks in schools. The Food Research and Action Center works with hundreds of organizations (nonprofits, labor unions, government agencies, and companies) to fight hunger in America. School Food FOCUS carries out policy work to improve the supply side of food so as to enhance food options in urban schools. These are among the most prominent public interest groups active in this policy sphere, but there are many others.

There is also a role to be played in food policy discussions by individuals. One common way for individuals to exert an influence is by using the media, such as writing a blog, preparing a YouTube video, or publishing a book. For example, Chap. 4 tells the story of Avis Richards, an independent filmmaker who produced a film criticizing the national school lunch program, and Mrs. Q (Sarah Wu), a schoolteacher who chronicled her experiences eating school lunches for a year in the Chicago public schools first through a blog, later in a book. (For a more detailed account of Mrs. Q, see Aspray et al. 2013.)

Individuals and groups of individuals sometimes use other legal means to capture a voice in the food policy debates. Tactics include boycotts, protests, petitions, letter-writing campaigns, strikes, work-to-rule, revelations, and teach-ins.

There are a number of instances of revelations, the making public or publicizing of facts about food and the food industry through writing or still or moving images. The cases of Avis Richards and Sarah Wu mentioned earlier are examples of revelations. A famous early example was Upton Sinclair's novel, *The Jungle*, published

in 1906, which provided an exposé on life working in the slaughterhouses of Chicago. The public response to this book culminated in the passage of the Pure Food and Drug Act and the Meat Inspection Act that same year. A more recent example is journalist Eric Schlosser's nonfiction expose of the fast-food industry in America, *Fast Food Nation*, published in 2001. Undercover work by the Animal Liberation Front and People for the Ethical Treatment of Animals might also fit into this category, although their work has more often been about animal rights in research labs and product testing labs than about animals in food research and food production. These organizations send their members into labs undercover, posing as employees, to gain access to documents and while there they snap photographs with hidden cameras, which they release to the public in some form such as *Unnecessary Fuss*, a movie about the treatment of baboons in a University of Pennsylvania research laboratory.

There are examples of people boycotting food products. Perhaps the most famous was the grape boycott in the 1960s organized by the United Farmworkers Union to support the plight of the farmworkers who were picking grapes. More recently, there has been a campaign to boycott food products produced by Monsanto, Bayer CropScience, and other biotech companies that are made with genetically modified organisms (GMOs). For example, REALfarmacy.com provides a list of companies that use GMOs in their products, while one can find lists of non-GMO products on the web pages of The Non-GMO Project and The Institute for Responsible Technology (Huff 2013). A recent development is Buycott, an app for smart phones on the Android and iPhone platforms that enables an individual to scan the barcode on a product and determine whether the product should be boycotted (O'Connor 2013). Artist Sally Davies has taken periodic photographs of a Happy Meal she purchased from McDonalds that show the indestructibility of the product over time—up to day 1,125 at the time of this writing. One might consider this a cultural criticism or revelation of fast food as much as a boycott (Forbes 2010; Davies 2010).

There has also been use of petitions related to food products. For example, for a number of years the Coalition of Immokalee Workers had been seeking wage increases for tomato pickers in south Florida. In 1991 the Coalition changed its tactics to target the fast-food restaurants such as McDonalds and Taco Bell that served these tomatoes. In a campaign entitled Boot the Bell, the Coalition sent petitions and letters to Yum!, the parent corporation of Taco Bell, asking that it only purchase tomatoes from suppliers that paid the pickers at the higher pay rate. Boot the Bell expanded into the Campaign for Fair Food when various religious groups, labor unions, and student groups joined the effort. McDonalds and Yum! signed an agreement to pay the higher wages but Burger King refused. Later, under continued pressure, Burger King also settled (Gould-Wartofsky 2007; Hartford 2008).

Groups have also used protests against food companies and their practices. The Coalition of Immokalee Workers, mentioned earlier, protested for months in 2009 in front of Publix grocery stores because the chain continued to buy tomatoes from suppliers that did not pay the farmworkers the higher wages that McDonalds and Taco Bell were paying (Smith 2009). In 2011 a major gay rights organization, Human Rights Campaign, protested against Chick-fil-A for its support of an antigay marriage organization (Gilgoff 2011).

Individuals and groups of individuals can also participate in food policy discussions through civil disobedience. Examples include illegal boycotts, refusal to pay taxes, forbidden speech, threats to government officials, victimless crimes such as public nudity, riots, occupation of private property, denial of service attacks, information theft, and data leaks.

In 2013 there was a coordinated nationwide strike of fast food workers seeking a minimum hourly wage of \$15 and the right to unionize. In St. Louis 12 of these protestors were arrested for failure to obey the reasonable commands of a police officer (KSDK 2013). Earlier the same month, in Seattle, under the organization Good Jobs Seattle, fast-food workers at Burger King, Taco Bell, Subway, Arby's, and Starbuck's, among other fast-food restaurants, picketed, carried out in-store demonstrations, offered a teach-in through the drive-through window, and finally eight workers linked arms and entered into civil disobedience outside a McDonalds restaurant, where they were arrested. They were protesting wage theft such as not paying at a higher rate for hours in excess of 40 per week, working without pay before or after their shifts, and taking illegal deductions from paychecks for such things as cash register shortages (Groves 2012).

Another type of illegal activity is vandalism. In 1992 Saeed Danosian, the manager of a McDonalds in Huntington Beach, California who had previously been trained as an artist in Vienna, painted a mural on the wall of a liquor store facing his McDonalds. The mural included representations of the Hamburglar, Ronald McDonald, and other McDonalds' characters. This mural had become a popular piece of public art in the city. One night in 2012 a radical group painted over the mural with the message "VEGAN" in large block letters. The original mural could not be repaired and had to be destroyed (Epting 2012; Arellano 2012).

We close this section with a description of the actions of two organizations, People for the Ethical Treatment of Animals (PETA) and the Animal Liberation Front (ALF). ALF is the more radical of the two organizations, although they often support one another's actions. Both have been designated by the USDA as terrorist threats (Frieden 2005; Merchant 2009). There has been a pattern of violence, arson, and assaults that have been attributed to these organizations.

In 2000 a PETA activist threw a pie in the face of the USDA Secretary at the National Nutrition Summit (Southern Policy Law Center 2002). Playing off the cardboard crowns that Burger King traditionally provided to children as a promotional item, in 2001 PETA began distributing crowns soaked in blood outside select Burger Kings across the United States and Canada as a means to protest the treatment the animals receive that end up in Burger King meals (Johnson and Johnson 2001). That same year, actor James Cromwell and three PETA officials were arrested at a Wendy's restaurant in Fairfax, Virginia for refusing to leave the premises. They were there to protest the company's treatment of pigs and chickens. Cromwell told the press, "after *Babe*, people recognized that pigs and other animals abused on factory farms are sensitive, gentle animals. It is high time that big corporations like Wendy's stopped treating these wonderful animals like meat machines" (Sims 2001). In 2005 PETA organized a campaign targeted at making children vegetarians, by depicting parents as "hooked on killing" and advising children to keep

puppies and kittens away from dad if he spends leisure time fishing (FoxNews 2005). This followed a cartoon style pamphlet distributed by PETA in 2003 entitled “Your Mommy Kills Animals” (PETA Kills Animals 2013). In 2009 PETA released a game Super Chick Sisters, a parody of Super Mario Brothers that details McDonald’s mistreatment of animals (Fahey 2009). The following year, PETA released another new game, Super Tofu Boy, which is a parody of Super Meat Boy (Fahey 2010).

Some of ALF’s activities are more radical than those of PETA. For example, in 1987 “ALF” and “murderers” are the words that were painted on the building at a fire causing \$200,000 in damage to the V. Melani poultry distribution company. In 1989, ALF burned down an Egg Products store in Salt Lake City and destroyed two of the company trucks. In 1997 it sprayed a noxious chemical in a McDonalds restaurant in Troy, Michigan and spray painted “McShit, McMurder, McDeath” on the bathroom walls. That same year, ALF burned down a McDonalds restaurant in West Jordan, Utah. In 1999 ALF set a fire in the Childer’s Meat Co. in Eugene, Oregon, causing extensive damage (Southern Policy Law Center 2002).

ALF continues to be active. In 2007 it took credit for the assault on a KFC fast-food restaurant in Bremerton, Washington, where “Animal Love,” “Mess with Animals get Served,” and “Meat is Murder” were spray painted on the side of the building and “Boycott KFC” posters were plastered to the exterior (Kitsap Sun Staff 2007). In 2011 ALF took credit for tearing down the fencing surrounding a pen at Damascus Elk Farm in Clackamas, Oregon (Animal Liberation Front 2011). In 2012, 75–100 pheasants were released from a farm in Scio, Oregon that breeds ring-necked pheasants for hunting and dog training. In an anonymous post on the Bite Back magazine website, The Animal Liberation Front took credit for dismantling a pheasant aviary and liberating the animals into the night sky (KVAL News Staff 2012). In 2013, ALF took credit for inserting glue in locks, pouring red paint, and spray painting the words “Free the Animals” across the patio of the Taco Asylum Restaurant in Costa Mesa, CA. ALF claimed to have targeted Taco Asylum for selling the meat of rabbits, ducks, cows, and pigs (Schou 2013).

This chapter has surveyed a number of ways in which formal and informal approaches to food policies are carried out. The next two chapters present detailed discussions of two important aspects of the food-related policy issue of childhood obesity. The final two chapters look not at a single food policy issue, such as childhood obesity, but instead give two examples of one particular type of informal policy approach, the use of the bully pulpit by First Ladies, as these two women addressed myriad food policy issues.

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