

[Appendix U (Exhibit “No.9”): See, Grievance Form KCF-1412-1376-09z

APPENDIX “U”



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

STEP III GRIEVANCE APPEAL DECISION

TO: Boone, Ronnie - #501976

B393

CURRENT FACILITY: KCF

GRIEVANCE ID#: KCF-14-12-1376-00z-28e

STEP II RESPONSE
DATE: 2/17/15

DATE STEP III APPEAL
RECEIVED: 8/28/15

BUSINESS DAYS
BETWEEN: 136

The above grievance was not filed to this Office within 10 business days of receiving the Step II response or within 10 business days of when it should have been received as required by PD 03.02.130, "Prisoner/Parolee Grievances".

Therefore, this Step III appeal is rejected as being untimely submitted to Step III.

The grievance category code has been modified to reflect the untimely submission. All future reference to this grievance should use the modified code.

This decision may not be appealed further within the Department. In addition, because this grievance is properly rejected, you have failed to exhaust the administrative remedies provided to you by this Department.

This issue is considered closed.



Date Mailed: SEP 21 2015

Richard D. Russell
Grievance Section Manager
Office of Legal Affairs

Copy to:

Warden: KCF

EXHIBIT No. 9

KCF-1412 1376 09z; Step III - Reason for Appeal

1. As stated in Step II response: The first step response is appropriate and is supported by the Warden's Office.
2. I Grievant was denied the right or opportunity to explain the grievance more completely at the interview to enable the Step I Respondent to identify and gather additional information needed to respond to the grievance when Mr. McMullen (AFSD), refused to interview me. Eating the meat that day I grievant had watery bowel movements, a mild diarrhea.
3. As stated under P.D. 03.02.130(Y), the respondent shall interview the grievant, and the grievant shall have the opportunity to explain the grievance.
4. Mr. McMullen (AFSD) put "NO SHOW" on the grievance response, and never interviewed me/grievant. This was stated in Step I but never addressed. By not addressing this issue makes the whole grievance process involved.
5. All (MDOC) day shift Officers stated Aramark Food Service never called them to send me/grievant over to the kitchen to be interview, (see, Affidavit OF Fact From The Officers; (EXHIBIT "G")).

Step III, Reason for Appeal

KCF 1412-1376-09z

Date 08/18/15

These Grievance's are being filed late do to the fact prisoner's Freeman 402493, and Boone 501976, was unable to obtain the information or affidavits of facts in a timely matter, needed for evidence until 07/06/15. Even if these grievance are rejected a tracking system shall include information on the subject matter of each grievance received, and for rejected grievance, the basis for the rejection, (P.D. 03.02.130(FF)).

Aramark Correction Services (ACS), is no longer working for the Michigan Department of Correction (MDOC), and the food services now is Trinity Service Group (TSG). The same employee's that work for (ACS), are working for (TSG). Even if (ACS) is no longer with (MDOC), they are still responsible for there action. Mr. Shawn McMullen Aramark Food Service Director (AFSD) is now working for (TSG).

EXHIBIT NO. 9

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE APPEAL FORM

4835-4248 5/09
 CSJ-247B

Date Received by Grievance Coordinator
 at Step II: 1/29/15

Grievance Identifier: KCF 14 12 1376 09Z

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: KCF
WARDEN'S OFFICE by 1/27/15. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (Print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>BOONE</u>	<u>501976</u>	<u>KCF</u>	<u>A363</u>		

STEP II — Reason for Appeal

I grievant does not have to wait to become seriously ill to challenge the safety and nutritional adequacy of the meals. I grievant consumed the prison food became ill, and experienced severe stomach pain, nausea, vomiting, fever, headache, and had diarrhea that night or otherwise experienced a condition intolerable for prison confinement. I grievant take medication for worsen headaches pain, sense I vomit, and had diarrhea, the grossly inadequate food came out of my body. So I did not have to go to health care for treatment. The food served had been prepared and served in unsanitary conditions that presented a serious risk of physical harm, and provided inadequate nutrition. I GRIEVANT WAS NOT INTERVIEWED IN STEP I, AND FOR GIVEN REASON BY RESPONDENT SHAWN McMULLEN (AFSD) "NO SHOW" I GRIEVANT WAS TOLD BY MDOC OFFICER'S, (AFS) NEVER CALLED THEM TO SEND ME/GRIEVANT OVER TO FOOD SERVICE, AND NO INMATE PASS WAS NEVER WRITTEN. THIS IS A VIOLATION OF P.D. 03-02-130 (Y).

STEP II — Response

Date Received by
 Step II Respondent:
1/29/15

D McMullen [Signature] 2-12-15
 Respondent's Name (Print) Respondent's Signature Date

Date Returned to
 Grievant:
2/17/15

STEP III — Reason for Appeal

SEE ATTACHED STEP III REASON FOR APPEAL

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III — Director's Response is attached as a separate sheet.

PRISONER'S NAME: Boone #501976, A-3-63

1376

DATE RECEIVED: 01/29/15 KCF 1412 ~~1367~~ 09z

STEP II RESPONSE: Your second step grievance regarding Food Service was received and reviewed by the Warden's Office. The first step response is appropriate and is supported by the Warden's Office.


At Step I the grievant states that on 12-14-14 while going through the serving line the kitchen served taco meat that made him sick. He found out from an Aramark worker that the meat was from leftover Salisbury steak served four days prior to this meal. Aramark acted with "deliberate indifference" when serving spoiled excess food. Step II the issue remains the same.

At Step I respondent indicates that all food is prepared according to proper food service protocol and Serve Safe procedures which include procedures for food storage and reuse. Over 1400 servings of taco meat were served during the meal in question and Boone was the only inmate reporting these symptoms. No inmates were seen in health care with issues related to food borne illness. Grievance denied.

At Step II it is noted that the Step I response is supported. KCF Food Service serves all meals in compliance with PD-04.07.102 Q. and OP-KCF-04.07.102.

Grievance denied.

2-12-15
Date Returned


Duncan MacLaren, Warden

DM:mm

EXHIBIT No. 9

L +

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM

4835-4247 10/94
CSJ-247A

Date Received at Step I 12/19/14 Grievance Identifier: KCF 14120 1376 092

The grievance form is to be filled out by the grievant. If you have any question concerning the grievance form, please contact the Grievance Coordinator or the Prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
RONNIE BOONE	501976	KCF	A-3-63	12/14/14	12/17/14

What attempt did you make to resolve this issue prior to writing this grievance? On what date? _____
If none, explain why.

Talked with Aramark Food Service Steward (Lewis) about the (taco meat), and was told it was grounded up left over (Salisbury Steal Meat).

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

On 12/14/14, for dinner Aramark served (MDOC) Statewide Standard Menu Meal (Taco). Grievant ate the (taco meat), got sick, experienced severe stomach pain, nausea, vomiting, fever, headaches, and had diarrhea that night or otherwise experienced a condition intolerable for prison confinement. The next day on 12/15/14, while in the kitchen grievant talked with Aramark Food Service Steward (Lewis) about the (taco meat), and was told it was grounded up left over food items (Salisbury Steak) that was served four days ago for lunch on 12/10/14. The meat served by Aramark was grounded up into mush, and nutritionally inadequate, spoiled, undercooked, watered-down, that made grievant violently ill. Aramark preparation of prison food was grossly inadequate to maintain grievant normal health, and did not handle food properly and served food so unsanitary as to present a health risk. Grievant faced a sufficiently serious risk to (his) health or safety and they Aramark official acted with "'deliberate indifference' to (his) health and safety," when serving spoiled excess food.

Ronnie Boone
Grievant's Signature

RESPONSE (Grievant Interviewed?) Yes No If No, give explanation. If resolved, explain resolution.)

EXHIBIT NO. 9

<u>S. Mowler</u>	<u>1-2-15</u>	<u>K. Dumbauld</u>	<u>1/8/15</u>
Respondent's Signature	Date	Reviewer's Signature	Date
<u>S. Mowler</u>	<u>FSD</u>	<u>K. Dumbauld</u>	<u>Bussing</u>
Respondent's Name (Print)	Working Title	Reviewer's Name (Print)	Working Title

Date Returned to Grievant: 1/12/15 If resolved at Step I, Grievant sign here. Resolution must be described above. Grievant's Signature _____ Date _____

Step I Grievance Response			
Grievance Number:	KCF-14-12-1376-9Z		
Prisoner Name:	BOONE		
Prisoner Number:	501976		
Prisoner	<input type="checkbox"/>	was	<input checked="" type="checkbox"/> was NOT interviewed. GIVE REASON:
<i>No show</i>			
SUMMARY OF COMPLAINT:			
Alleged food related illness			
INVESTIGATION INFORMATION			
Health care services, food cool-down temperature logs			
APPLICABLE POLICY, PROCEDURE, ETC.			
SUMMARY			
All food is prepared according proper food service protocol and Serve Safe procdures. These protols include procedures for food storage and reuse. Over 1400 servings of taco meat were served during the meal in question and Boone was the only inmate reporting these symptoms. Furthermore, no inmates were seen in health care service with issues related to food borne illness.			
RESPONDENT NAME:	Shawn McMullen	TITLE:	FSD
RESPONDENT SIGNATURE:	<i>[Signature]</i>	DATE:	1-2-15
REVIEWER NAME:	<i>[Signature]</i>	TITLE:	Boony
REVIEWER SIGNATURE:	<i>[Signature]</i>	DATE:	1/8/15

EXHIBIT NO. 9

[Appendix V (Exhibit “No.12”): See, Grievance Form KCF-1412-1396-09z

APPENDIX “V”



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

STEP III GRIEVANCE APPEAL DECISION

TO: Freeman, Antonio - #402493

C313

CURRENT FACILITY: ~~KCF~~

GRIEVANCE ID#: KCF-14-12-1396-09z-28e

STEP II RESPONSE
DATE: 2/17/15

DATE STEP III APPEAL
RECEIVED: 8/28/15

BUSINESS DAYS
BETWEEN: 131

The above grievance was not filed to this Office within 10 business days of receiving the Step II response or within 10 business days of when it should have been received as required by PD 03.02.130, "Prisoner/Parolee Grievances".

Therefore, this Step III appeal is rejected as being untimely submitted to Step III.

The grievance category code has been modified to reflect the untimely submission. All future reference to this grievance should use the modified code.

This decision may not be appealed further within the Department. In addition, because this grievance is properly rejected, you have failed to exhaust the administrative remedies provided to you by this Department.

This issue is considered closed.

Date Mailed: SEP 21 2015

Richard D. Russell
Grievance Section Manager
Office of Legal Affairs

Copy to:

Warden: KCF

EXHIBIT No. 12

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE APPEAL FORM

4835-4248 5/09
CSJ-247B

Date Received by Grievance Coordinator
at Step II: 1/27/15

Grievance Identifier: KCF 141201396 092

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

RECEIVED MBOO
AUG 28 2015
Office of Legal Affairs
KCF

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: WARDEN'S OFFICE by 1/26/15 2/2/15 RA. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (Print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>FREEMAN</u>	<u>402493</u>	<u>KCF</u>	<u>A-263</u>		

STEP II — Reason for Appeal

SEE ATTACHED STEP II REASON FOR APPEAL

STEP II — Response

Date Received by
Step II Respondent:
1/27/15

D. McCarver [Signature] 2/2/15
Respondent's Name (Print) Respondent's Signature Date

Date Returned to
Grievant:
2/17/15

STEP III — Reason for Appeal

SEE ATTACHED STEP III REASON FOR APPEAL.

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III — Director's Response is attached as a separate sheet.

DISTRIBUTION: White - Proces **EXHIBIT No. 1** Step II; Goldenrod - Grievant

KCF-1412 1396 09z; Step III - Reason for Appeal

As stated in Step II Reason for Appeal: grievant was not interviewed on the grievance, and for given reason by Respondent, Shawn McMullen (AFSD), he put "NO SHOW" on Step I Grievance Response. Stated in the Reason for Appeal, no. 3, I grievant talked with all MDOC day shift Officer's, and they all stated (AFS) never called them to send me/grievant over to food services, and no inmate pass was never written, (see, Affidavit of Fact; (EXHIBIT " H ")).

Mr. McMullen (AFSD), perpetrated fraud/perjury on the grievance forms by putting "NO SHOW" trying to cover up what happened, not just once, but on several difference grievance forms, (see, Grievance Forms; KCF14121396-09z; (EXHIBIT " J ")); KCF-14121401-09z, (EXHIBIT " K ")); KCF-1412136709z, (EXHIBIT " L ")); KCF-14121310-09z, (EXHIBIT " M)); and KCF-15010066-28j, (EXHIBIT " N ")).

I grievant was not giving the opportunity to explain the grievance more completely at a interview, nor show the evidence, as stated in P.D. 03.02.130(Y), and as shown in (KCF-14121310-09z, (EXHIBIT " M ")).

ALSO SEE, (COPIES OF COOKIE WITH PLASTIC FOUND INSIDE; (EXHIBIT " J-1 " PAGES 1-4)).

EXHIBIT No. 1 Z

STEP II - Reason for Appeal
TCF-14120-1396-09z

In Step I Grievance Response it stated I grievant was not interviewed because of given reason "NO SHOW," called 3 times, in the Summary: all meals are prepared in accordance with proper Serve Safe procedures and policy directive 04.07.100 "offender meals", Even if he had observed this breach of protocol, Grievant still had the option of choosing an alternate fresh fruit choice in order to receive his proper nutritional for that meal.

- (1) If all meals were prepared in accordance with proper Serve Safe procedures "why" did grievant find a piece of plastic cooked inside of his cookie (evidence holding)?
- (2) I grievant received my food tray, and then went at a table to eat my food. The last thing I grievant ate on the tray was my cookie. While I grievant was eating my cookie I found a piece of plastic inside the cookie. So I grievant did not have the option of choosing an alternate fresh fruit because it was too late after eating some of the cookie. I grievant could not take the cookie back to the serving line and say I want the fresh fruit because its plastic inside the cookie, (if a sign was posted and state that plastic is inside of the cookies I grievant would have taking the fresh fruit instead of the cookie, to meet the proper nutritional allowance for that meal).
- (3) I grievant was not interviewed on the grievance, and for given reason by respondent Shawn McMullen (AFSD) "NO SHOW." I grievant talked with all MDOC day shift Officer's, and they all stated Acamark Food Service never called them to send me/grievant over to food service, and no inmate pass was never written.

I grievant contends respondent Shawn McMullen (AFSD), violated my rights when he acted willfully and under color of law to commit (fraud, making a false report, and the Policy Directive by not giving me the opportunity to explain the grievance more completely at the interview, and show the evidence.

- (1) Mr. McMullen (AFSD) knew or should have been aware of facts from which they could infer that a substantial risk existed that "foreign object" are finding its way into the food product, much less that such an object would create such a serious threat to a prisoner's/grievant health or otherwise experienced a condition intolerable for prison confinement.
- (2) Mr. McMullen (AFSD) acted with "'deliberate indifference' to grievant health and safety."
- (a) Under 18 U.S.C.S. sec. 242, it is a criminal offense to act willfully and under color of law to deprive a person of rights protected by the constitution or laws of the United States, (false report, fraud, falsifying a record).
- (b) Under P.D. 03.02.130(Y), the respondent shall interview the grievant, and the grievant shall have the opportunity to explain the grievance more completely at the interview to enable the Step I respondent to identify and gather any additional information needed to respond to the grievance.

EXHIBIT No. 1 2

PRISONER'S NAME: Freeman #402493, A-2-63

DATE RECEIVED: 01/27/15 KCF 1412 1396 09z

STEP II RESPONSE: Your second step grievance regarding Food Service was received and reviewed by the Warden's Office. The first step response is appropriate and is supported by the Warden's Office.

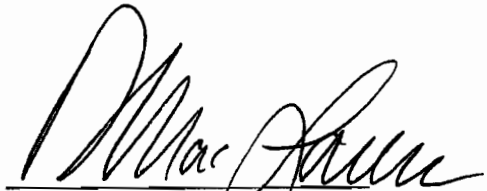
At Step I the grievant states that on 12-22-14 he found a piece of plastic in his cookie. This is unsanitary and presents a health risk. At Step II the issue remains the same.

At Step I respondent indicates that the grievant was not interviewed after three attempts. All meals are prepared in accordance with proper Serve Safe procedures and PD-04.07.100, "Offender Meals." Even if this occurred the prisoner still had the option to request fresh fruit to meet nutritional allowances for the meal. Grievance denied.

At Step II it is noted that the Step I response is valid. KCF Food Service serves all meals in compliance with PD-04.07.100 and PD-04.07.101. The grievant should have reported the incident to staff immediately and is encouraged to do so if any other foreign object is found in his food. As too much time has passed there is no way to verify that this actually occurred.

Grievance denied.

2-12-15
Date Returned


Duncan MacLaren, Warden

DM:mm

EXHIBIT No. 12

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM

4835-4247 10/94
CSI-247A

Date Received at Step I 12/29/14 Grievance Identifier: KCF/A/1201396/097

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Antonio Freeman	402493	KCF	A-2.63	12/22/14	12/22/14

What attempt did you make to resolve this issue prior to writing this grievance? On what date? _____
If none, explain why.

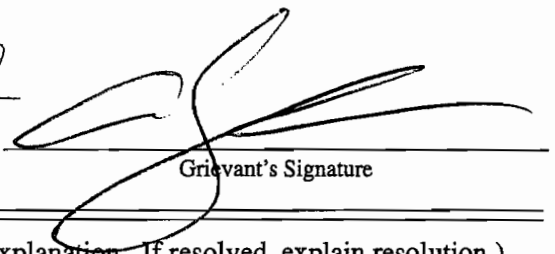
No attempt was made of resolving this issue (evidence holding).

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used.

Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

On 12/22/14, I grievant went to eat lunch and Aramark was serving (ultimate dessert: sugar cookies). While I grievant was eating my cookie I observed a piece of plastic cooked inside the cookie (evidence holding). This is the second incident I grievant has observed plastic glove found cooked inside the prison food within a two month period (Nov. and Dec.) of 2014. Aramark staff are acting with "deliberate indifference" to grievant's health and safety, when keep serving contaminated, unsanitary, sufficiently gross, and unclean food. The preparation of prison food was grossly inadequate to maintain grievant normal health. The contaminated food did not meet the nutritional needs because it was unfit to eat as to present a health risk from foodborne illness or not a wholesome and nutritionally adequate meal or otherwise experienced a condition intolerable for prison confinement. This is a violation of P.D. 04.07.102 (G), and M.C.L.A. 289.1107 sec. (c) & (l).

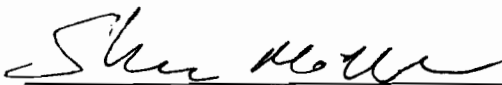
EXHIBIT No. 12

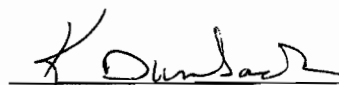

Grievant's Signature

RESPONSE (Grievant Interviewed?) Yes No If No, give explanation. If resolved, explain resolution.)

No show

See attached


Respondent's Signature
S. McMillan
Respondent's Name (Print)
1-5-15
Date
FSD
Working Title


Reviewer's Signature
K. Ombard
Reviewer's Name (Print)
11/8/15
Date
Bussinger
Working Title

Date Returned to Grievant: 1/2/15 If resolved at Step I, Grievant sign here. Resolution must be described above. Grievant's Signature _____ Date _____

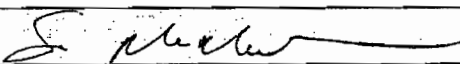
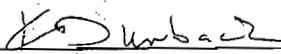

Step I Grievance Response			
Grievance Number:	KCF-14-12-1396-9Z		
Prisoner Name:	Freeman		
Prisoner Number:	402493		
Prisoner	<input type="checkbox"/>	was	<input checked="" type="checkbox"/> was NOT interviewed. GIVE REASON:
			No show. called 3 times
SUMMARY OF COMPLAINT:			
Alleged Food contamination			
INVESTIGATION INFORMATION			
Interviewed Aramark staff			
APPLICABLE POLICY, PROCEDURE, ETC.			
Food safety and proper service procedures			
SUMMARY			
All meals are prepared in accordance with proper Serve Safe procedures and policy directive 04.07.100 "offender meals". Even if he had observed this breach of protocol, Grievant still had the option of choosing an alternate fresh fruit choice in order to receive his proper nutritional allowance for that meal.			
RESPONDENT NAME:	Shawn McMullen	TITLE:	FSD
RESPONDENT SIGNATURE:		DATE:	11-5-15
REVIEWER NAME:		TITLE:	Buyer
REVIEWER SIGNATURE:		DATE:	1/8/15

EXHIBIT No. 12

[Appendix W (Exhibit “No.10”): See, Grievance Form KCF-1412-1401-09z

APPENDIX “W”



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

STEP III GRIEVANCE APPEAL DECISION

TO: Boone, Ronnie - #501976

B313

CURRENT FACILITY: KCF

GRIEVANCE ID#: KCF-14-12-1401-09z-28e

STEP II RESPONSE
DATE: 1/30/15

DATE STEP III APPEAL
RECEIVED: 8/28/15

BUSINESS DAYS
BETWEEN: 147

The above grievance was not filed to this Office within 10 business days of receiving the Step II response or within 10 business days of when it should have been received as required by PD 03.02.130, "Prisoner/Parolee Grievances".

Therefore, this Step III appeal is rejected as being untimely submitted to Step III.

The grievance category code has been modified to reflect the untimely submission. All future reference to this grievance should use the modified code.

This decision may not be appealed further within the Department. In addition, because this grievance is properly rejected, you have failed to exhaust the administrative remedies provided to you by this Department.

This issue is considered closed.

SEP 21 2015

Date Mailed:

Richard D. Russell
Grievance Section Manager
Office of Legal Affairs

Copy to:

Warden: KCF

EXHIBIT No. 10

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE APPEAL FORM

4835-4248 5/09
CSJ-247B

Date Received by Grievance Coordinator
at Step II: 1/27/15

Grievance Identifier: KCF/A12, 1404, 092

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE. The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

RECEIVED - MDOC
AUG 28 2015
Office of Legal Affairs KCF

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to WARDEN'S OFFICE by 1/27/15. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (Print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>BOONE</u>	<u>501976</u>	<u>KCF</u>	<u>A3-63</u>		

STEP II – Reason for Appeal

SEE ATTACHED STEP II REASON FOR APPEAL

STEP II – Response

See attached

Date Received by
Step II Respondent:
1/27/15

Kathy Olson
Respondent's Name (Print)

Kathy Olson A/Warden
Respondent's Signature

1/30/15
Date

Date Returned to
Grievant:
1/30/15

STEP III – Reason for Appeal

SEE ATTACHED STEP III REASON FOR APPEAL

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III – Director's Response is attached as a separate sheet.

KCF-1412 1401 09z; Step III - Reason for Appeal

1. As stated in Step II response: there is no evidence presented by grievant to substantiate his claim.
2. Grievant was denied the right or opportunity to explain the grievance more completely at the interview to enable the Step I Respondent to identify and gather additional information needed to respond to the grievance when Mr. McMullen (AFSD), refused to interview him. The evidence was going to be shown during the interview, but no interview was conducted, (see, Picture Of Cook With Plastic Inside; (EXHIBITS "J")).
3. As stated under P.D. 03.02.130(Y), the respondent shall interview the grievant, and the grievant shall have the opportunity to explain the grievance.
4. Mr. McMullen (AFSD) put "NO SHOW" on the grievance response, and never interviewed grievant.
5. All (MDOC) day shift Officers stated Aramark Food Service never called them to send me/grievant over to the kitchen to be interview, (see, Affidavit Of Fact From The Officers; (EXHIBIT "G")).

EXHIBIT No. 10

STEP II - Reason for Appeal
KCF-14-12-1401-9z

In Step I Grievance Response it stated I grievant was not interviewed because of given reason "NO SHOW," and in the Summary: This grievance has already been answered and handle with the offender who allegedly found debris in food and is a duplicate. All meals are prepared in accordance with proper Serve Safe procedures and policy directive 04.07.100 "offender meals." Even if he had observed this breach of protocol, Grievant still had the option of choosing an alternate fresh fruit choice in order to receive his proper nutritional allowance for that meal.

(1) Grievant grievance has a difference grievance number on it, and it dose not pertain to the other offender who found debris in there food, and is not a duplicate because its dealing with the "Food Quality Assurance," and "Public Health Requirement. This is the second incident within a two (2) month period I grivant has observed plastic found cooked inside the prison food.

(2) If all meals are prepared in accordance with proper Serve Safe procedures, we prisoners would not be finding "foreign object" in the prison food.

(3) Once we receive our food tray, and go to the table, we do not have the option of choosing something else when we find "foreign object" in the food.

I grievant contends that respondent Shawn McMullen (AFSD), violated my rights under 18 U.S.C.S. sec. 242, and under the P.D. 03.02.130(Y), when he acted willfully and under color of law to commit (fraud, making a false report), and the Policy Directive by not giving me the opportunity to explain the grievance more completely at the interview, and show the evidence.

By putting
"NO SHOW"
on the
GRIEVANCE

(1) On two (2) difference incident I grievant have witness, and evidence of this breach of protocol.

(2) Mr. McMullen (AFSD) knew or should have been aware of facts from which he could infer that a substantial risk existed that "foreign object" are finding its way into the food product, much less that such an object would create such a serious threat to a prisoners/grievants health or otherwise experienced a condition intolerable for prison confinement.

(3) Mr. McMullen acted with "'deliberate indifference' to grievant health and safety," when he refused to interview grievant, and put "NO SHOW" on the grievance/response. All (MDOC) day shift Officers was asked if Aramark Food Service called them to send me/grievant over to the kitchen to be interview, and all of the Officer's stated "NO," and "NO" inmate pass was never written.

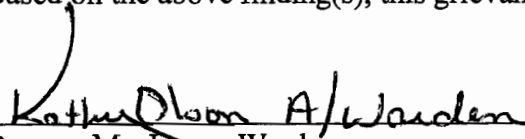
STEP II GRIEVANCE RESPONSE FOR PRISONER: Boone 501976 A-363 (KCF)

Grievance KCF 1412 1401 09Z, has been reviewed.

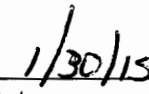
Grievant alleges that he observed a food service worker remove a piece of plastic glove from the dessert meal of sugar cookies on 12/22/14. Grievant indicates that Armark employees are aware of this risk to inmate health however the acts show deliberate indifference and reckless disregard. The Step I respondent, S McMullen indicates that the issue was investigated and staff present at the time of the alleged incident deny this occurrence. S, McMullen also notes that all meals are prepared with proper serve safe procedures and Grievant had other meal choices.

This Step II respondent finds the Step I response appropriate. There is no evidence presented by Grievant to substantiate his claim. Grievant makes an allegation of inappropriate conduct and meal preparation but produces no sources to verify this claim. No violation of Serve Safe procedures or PD 04.07.100 Offender Meals is established.

Based on the above finding(s), this grievance appeal is denied.



Duncan MacLaren, Warden



Date

DM/dpm

EXHIBIT No. 10

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM

4835-4247 10/94
 CSJ-247A

Date Received at Step I 12/22/14 Grievance Identifier: KCF 14-1291A01 092

Be brief and concise in describing your grievance issues. If you have any questions concerning the grievance procedure, refer to MCL 207.4130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
RONNIE BOONE	501976	KCF	A-3-63	12/22/14	12/26/14

What attempt did you make to resolve this issue prior to writing this grievance? On what date? _____
 If none, explain why.

Informed Aramark staff verbally, and by grievance about the plastic being found in the prison food.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used.

On ~~12/22/14~~ ^{12/22/14} copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

On 12/22/14, I grievant went to eat lunch and Aramark was serving (ultimate dessert: sugar cookies). While I grievant was eating I observed prisoner Freeman (402493) pulling a piece of plastic out of his cookie. This is the second incident within a two month period (NOV., and Dec. of 2014), grievant has observed plastic glove found cooked in the prison food. In "Food Quality Assurance": P.D. 04.07.102 (G), preparation of food shall be closely monitored by qualified staff to ensure that meals are produced in accordance with public health requirements. In the "Public Health Requirement": MCL 289.1107 (1) "food safety and sanitation assessment" means judging or assessing specific food handling activities, events, conditions, or management systems in an effort to determine their potential effectiveness in controlling risks for foodborne illness and required compliance with this act, accompanied by a report of findings. The preparation of the prison food are not being closely monitored by Aramark staff, and meals are not being produced accordance with public health requirements. Aramark staff are "deliberate indifference" or "reckless disregard" for safety by failing to "act reasonably" in response to danger or risks for foodborne illness by keep serving contaminated, unsanitary, sufficiently gross, or unclean food. Aramark staff "knew of the plastic being found in the food and disregarded an excessive risk to inmate health or safety. Aramark staff are aware of facts (KCF-Grievance-14-11-1304-9) from which the inference could be drawn that a substantial risk of serious harm could exists from contaminated food or health risk from foodborne illness. This is in violation of MCL 289.1107 sec. (c) & (1), "Public Health Requirement," and PD 04.07.102 (G), "Food Quality Assurance." The contaminated food did not meet the nutritional needs because it was unfit to eat as to present a health risk from foodborne illness or not a wholesome and nutritionally adequate meal or otherwise experienced a condition intolerable for prison confinement.

Ronnie Boone
 Grievant's Signature

RESPONSE (Grievant Interviewed?) Yes No If No, give explanation. If resolved, explain resolution.)

No show

On 12/22/ see attached

<u>S. [Signature]</u> Respondent's Signature	<u>1-5-15</u> Date	<u>[Signature]</u> Reviewer's Signature	<u>1/8/15</u> Date
<u>S. [Name]</u> Respondent's Name (Print)	<u>FSD</u> Working Title	<u>[Name]</u> Reviewer's Name (Print)	<u>[Name]</u> Working Title

Date Returned to Grievant: 1/22/15 If reso. Resolu. **EVIDENCE No. 111** Date _____

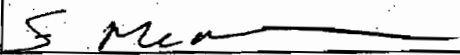
Step I Grievance Response			
Grievance Number:	KCF-14-12-1401-9Z		
Prisoner Name:	Boone		
Prisoner Number:	501976		
Prisoner	<input type="checkbox"/>	was	<input checked="" type="checkbox"/> was NOT interviewed. GIVE REASON: <i>No show</i>
SUMMARY OF COMPLAINT:			
Alleged Food contamination			
INVESTIGATION INFORMATION			
Interviewed Aramark staff			
APPLICABLE POLICY, PROCEDURE, ETC.			
Food safety and proper service procedures			
SUMMARY			
This grievance has already been answered and handled with the offender who allegedly found debris in food and is a duplicate. All meals are prepared in accordance with proper Serve Safe procedures and policy directive 04.07.100 "offender meals". Even if he had observed this breach of protocol, Grievant still had the option of choosing an alternate fresh fruit choice in order to receive his proper nutritional allowance for that meal.			
RESPONDENT NAME:	Shawn McMullen	TITLE:	FSD
RESPONDENT SIGNATURE:		DATE:	1-5-15
REVIEWER NAME:		TITLE:	
REVIEWER SIGNATURE:		DATE:	

EXHIBIT NO. 10

[Appendix X (Exhibit “JJ”): See, P.D. 04.07.102(G)]

APPENDIX “X”

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE KCF LAW Library		EFFECTIVE DATE	NUMBER
		8-15-94	04.07.102
		SUPERSEDES	
		PD-BCF-50.02 (4-15-82)	
		AUTHORITY	
		MCL 791.203	
SUBJECT			
<u>INDIVIDUAL HEALTH ASSURANCE</u>			
		ACA STANDARDS	
		3-4304, 3-4306, 3-4307	
		PAGE 1 OF 4	

I. POLICY STATEMENT: Standards shall be followed to ensure that quality food is provided to inmates and staff.

II. POLICY: DEFINITIONS

A. Public Health Requirements: Meeting the requirements of the Public Health Code (Act 368, P.A. 1978, Part 129) and the U.S. Food and Drug Administration.

FOOD SUPPLY

B. All food items purchased or produced by the Department shall be received, examined and stored in accordance with public health requirements and regulations of the Department of Management and Budget. Milk produced at the institution shall be examined for wholesomeness and approved for use by the Department of Agriculture. Department farm products shall be delivered to food service when fresh and in optimum condition and in accordance with public health requirements.

C. Staff shall not purchase food past the sell by date or purchase or use food after the manufacturer's expiration date.

D. The quantity of food purchased shall be determined by the number of meals to be served, amounts listed on the standardized recipes, past usage and any changes in the prison population.

E. Satellite units with production equipment shall maintain a two-day emergency supply of food. The food shall be secured and used for emergencies only or when the stock is rotated (every three months for frozen foods and dry goods and every six months for canned goods).

KCF LAW Library

FOOD PRODUCTION

F. Standardized recipes adjusted to yield appropriate number of servings for the size of the facility shall be used in the production of all menu items. The Department's Recipe Book, Armed Forces Recipes or other tested quantity recipes shall be the basis for the recipe file.

DOCUMENT TYPE	EFFECTIVE DATE	NUMBER	PAGE
POLICY DIRECTIVE	8-15-94	04.07.102	2 OF 4

G. A Food Production Worksheet form (CAR-268) shall be prepared for meals by the Production Supervisor. Recipes for each menu item shall accompany the Production Sheet to the various food preparation areas. Preparation of food shall be closely monitored by qualified staff to ensure that the recipes are followed and that meals are produced in accordance with public health requirements.

FOOD EVALUATION

H. Prior to the shipment of food to a satellite unit, and prior to the service of the noon and evening meals at all facilities, a minimum of three menu items shall be evaluated for flavor, texture or consistency, appearance, tenderness and overall eating quality. Industry standards for desirable characteristics of food items shall be used as the standard.

I. The preservice quality checks shall be made at least 30 minutes before the meal is served. Quality checks in institutions shall be made by one of the following:

1. Food production supervisor.
2. Inmate lead worker working area that produces food to be evaluated.
3. Non-food service prisoner representative.
4. Custodial staff member.
5. Food Service Director when available.
6. Other(s) as designated by the warden.

J. Quality checks in the camps shall be made by one of the following:

1. Custodial staff member.
2. First cook.

K. The food production supervisor or the first cook in the Camp Program shall coordinate the preservice quality checks and prepare written reports. Records of food evaluations shall be maintained for a period of 45 days to allow the Food Service Director to implement suggested changes when appropriate and to evaluate the results of corrective action taken.

L. Menu items identified during the quality control evaluation as needing additional seasonings or other adjustments shall be modified before the meal is served. Menu items that are unacceptable for service shall not be served unless corrected. The Food Service Director or designee shall make the final decision as to whether an item must be removed from the menu. Alternative menu items shall be established so that substitutions can be made with minimum delays in meal time. Those substitutions must be of comparable nutritional value and noted on the menu and on the Report of Menu Change form (CAH-108).

EXHIBIT JJ

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 8-15-94	NUMBER 04.07.102	PAGE 3 OF 4
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- M. if a prisoner has a concern with a food item once service of a meal has started and s/he brings that problem to the attention of a food service employee, that employee shall immediately assess the concern if necessary and, if the prisoner's concern is valid, immediately bring that concern to the attention of the ranking food service employee. The ranking food service employee shall make the determination if the item needs to be pulled from the line and an immediate substitution made.

KCF LAW Library

MEAL DISTRIBUTION

- N. Transportation and service of meals shall be consistent with public health requirements regarding thermal and bacterial protection.
- O. All meals shall be served under the direct supervision of staff to ensure that favoritism, careless serving and waste are avoided.
- P. Food items shall be preplated, portioned or served according to instruction listed on the recipe card or production sheet.
- Q. Appropriate serving ware shall be provided based on the security level.

EXCESS FOOD

Conventional Kitchen With Attached Dining Room

- R. Food items not served at the meal shall be used within 48 hours. Leftover food items not scheduled for use within 48 hours shall be frozen and scheduled for service within 30 days. Foods shall be refrigerated or frozen in accordance with public health requirements.

Conventional Kitchen With Satellite Dining Room

- S. Food items not served at the meal shall be discarded if equipment is not available to maintain thermal and bacterial protection consistent with public health requirements. If appropriate hot and cold food holding equipment is available, excess food shall be scheduled for use within 48 hours, frozen immediately and scheduled for service within 30 days or discarded.

Cook/Chill Satellite Unit

- T. Food items that have been heated and not served at a given meal shall be discarded.

KCF LAW Library

Cook/Chill Production Kitchen

- U. Food items not shipped to a satellite unit in time for use within 5 days of production date shall be discarded.

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 8-15-94	NUMBER 04.07.102	PAGE 4 OF 4
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Labeling

- V. Food items not served at the meal shall be labeled with the production date, last date to use by and supervisor's signature. The Food Service Director or designee shall inspect the food service areas to ensure that food is used by the due date or appropriately discarded.

OPERATING PROCEDURE

- W. Wardens shall ensure that within 60 days of its effective date, procedures implementing this policy directive are developed and forwarded to the appropriate Regional Prison Administrator for approval.

III. AUDIT ELEMENTS

- X. A Primary Audit Elements List has been developed to ensure compliance with this policy by providing staff with a tool for self auditing. The List shall be used by wardens for auditing purposes on an annual basis unless more frequently required by the Director or Deputy Director and the appropriate documentation shall be retained on-site and made available to the Internal Auditor when requested.

APPROVED:


Kenneth L. McGinnis, Director

7/22/94
Date

EXHIBIT JJ

[Appendix Y (Exhibit “No.KK”): See, MCLA 289.1107(1)]

APPENDIX “Y”

History:

Pub Acts 2000, No. 92, Ch. I, § 1105, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000 (see 2000 note below); amended by Pub Acts 2007, No. 113, imd eff October 16, 2007, by enacting § 2(2) eff April 1, 2008 (see 2007 note below); 2008, No. 338, imd eff December 23, 2008; 2010, No. 113, imd eff July 12, 2010 (see 2010 note below).

Editor's notes:

Pub Acts 2000, No. 92, § 1117, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000, provides:

"Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

"(2) Until 6 months after the effective date of this act, compliance with the standards of the design, construction, and equipment of a food service establishment approved under former sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12911, 12912, 12913, 12916, and 12921 of the public health code, MCL 333.12901, 333.12902, 333.12903, 333.12904, 333.12905a, 333.12906, 333.12907, 333.12908, 333.12910, 333.12911, 333.12912, 333.12913, 333.12916, and 333.12921, is considered compliance with this act.

"(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act."

Pub Acts 2007, No. 113, enacting § 3, imd eff October 16, 2007, provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Bill No. 595 of the 94th Legislature [Pub Acts 2007, No. 114] is enacted into law."

Pub Acts 2010, No. 113, enacting § 1, imd eff July 12, 2010, provides:

"Enacting section 1. This amendatory act does not take effect unless House Bill No. 5280 of the 95th Legislature [Pub Acts 2010, No. 112] is enacted into law."

Effect of amendment notes:

The 2007 amendment revised paragraph (a), subparagraph (vi) from one which read: "It is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section 512 of the federal act, 21 U.S.C. 512."; and revised paragraph (c) from one which read: "Bed and breakfast" means a private residence that offers sleeping accommodations to transient tenants in 14 or fewer rooms for rent, is the innkeeper's residence in which the innkeeper resides while renting the rooms to transient tenants, and serves breakfasts at no extra cost to its transient tenants. A bed and breakfast is not considered a food service establishment if exempt under section 1107 (l)(iii) or (iv)."

The 2008 amendment added paragraph (c); and redesignated former paragraphs (c)-(g) as (d)-(h).

The 2010 amendment added paragraphs (h), (i), and (k); and redesignated former paragraph (h) as (j).

Statutory references:

Section 1107, above referred to, is § 289.1107.

LexisNexis® and Other Annotations

Federal aspects:

Food, drugs, and cosmetics. 21 USCS §§301-321, 333, 334-334-3, 344-346a, 347, 348-356c, 358, 359, 360, 360-360dd, 360hh-363, 371-376, 378-397.

LexisNexis® Michigan analytical references:

Michigan Law and Practice, Public Health and Welfare §§71, 77.

Research references:

35A Am Jur 2d, Food §§1-5.

D to F. [MSA § 12.933(1107)]

Sec. 1107. As used in this act:

- (a) "Department" means the Michigan department of agriculture.
- (b) "Director" means the director of the Michigan department of agriculture or his or her designee.
- (c) "Evaluation" means a food safety audit, inspection, or food safety and sanitation assessment, whether announced or unannounced, that identifies violations or verifies compliance with this act and determines the degree of active control by food establishment operators over foodborne illness risk factors.
- (d) "Extended retail food establishment" means a retail grocery that does both of the following:
 - (i) Serves or provides an unpackaged food for immediate consumption.
 - (ii) Provides customer seating in the food service area.
- (e) "Fair concession" means a food concession, storage, preparation, or dispensing operation at a state or county fair.
- (f) "Federal act" means the federal food, drug, and cosmetic act, 21 USC 301 to 397.
- (g) "Food" means articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article.
- (h) "Food additive" means any substance, the intended use of which, directly or indirectly, results in or may be reasonably expected to result in its becoming a component or otherwise affecting the characteristics of any food if that substance is not generally recognized among experts as having been adequately shown through scientific procedures to be safe under the conditions of its intended use. Food additive includes any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and includes any source of radiation intended for any use. Food additive does not include any of the following:
 - (i) A pesticide chemical in or on a raw agricultural commodity.
 - (ii) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.
 - (iii) A color additive.
 - (iv) Any substance used in accordance with a sanction or approval granted before the enactment of the food additives amendment of 1958, Public Law 85-929, pursuant to the federal act, the poultry products inspection act, 21 USC 451 to 471, or the meat inspection act of March 4, 1907, chapter 2907, 34 Stat. 1258.
- (i) "Food code" means food code, 2005 recommendations of the food and drug administration of the United States public health service that regulates the design, construction, management, and operation of certain food establishments.
- (j) "Food establishment" means an operation where food is

EXHIBIT KK

KK

processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. Food establishment includes a food processing plant, a food service establishment, and a retail grocery. Food establishment does not include any of the following:

(i) A charitable, religious, fraternal, or other nonprofit organization operating a home-prepared baked goods sale or serving only home-prepared food in connection with its meetings or as part of a fund-raising event.

(ii) An inpatient food operation located in a health facility or agency subject to licensure under article 17 of the public health code, MCL 333.20101 to 333.22260.

(iii) A food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or other facility where the facility is the primary residence for the occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement.

(k) "Food processing plant" means a food establishment that processes, manufactures, packages, labels, or stores food and does not provide food directly to a consumer. Food processing plant does not include a maple syrup producer.

(l) "Food safety and sanitation assessment" means judging or assessing specific food handling activities, events, conditions, or management systems in an effort to determine their potential effectiveness in controlling risks for foodborne illness and required compliance with this act, accompanied by a report of findings.

(m) "Food safety audit" means the methodical examination and review of records, food sources, food handling procedures, and facility cleaning and sanitation practices for compliance with this act, accompanied by a report of findings. Food safety audit includes checking or testing, or both, of observable practices and procedures to determine compliance with standards contained in or adopted by this act, accompanied by a report of findings.

(n) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:

(i) A motel that serves continental breakfasts only.

(ii) A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.

(iii) A bed and breakfast that has at least 11 but fewer than

15 rooms for rent, if the bed and breakfast serves continental breakfasts only.

(iv) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.

(o) "Food warehouse" means a food establishment that stores or distributes prepackaged food for wholesaling.

History:

Pub Acts 2000, No. 92, Ch. I, § 1107, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000 (see 2000 note below); amended by Pub Acts 2007, No. 113, imd eff October 16, 2007, by enacting § 2(2) eff April 1, 2008 (see 2007 note below); 2008, No. 338, imd eff December 23, 2008.

Editor's notes:

Pub Acts 2000, No. 92, § 1117, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000, provides:

"Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

"(2) Until 6 months after the effective date of this act, compliance with the standards of the design, construction, and equipment of a food service establishment approved under former sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913, 12916, and 12921 of the public health code, MCL 333.12901, 333.12902, 333.12903, 333.12904, 333.12905a, 333.12906, 333.12907, 333.12908, 333.12910, 333.12911, 333.12912, 333.12913, 333.12916, and 333.12921, is considered compliance with this act.

"(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act."

Pub Acts 2007, No. 113, enacting § 3, imd eff October 16, 2007, provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Bill No. 595 of the 94th Legislature [Pub Acts 2007, No. 114] is enacted into law."

Effect of amendment notes:

The 2007 amendment added paragraphs (c), (e), (l), and (m); redesignated former paragraph (c) as (d); redesignated former paragraphs (d)-(g) as (f)-(i); revised paragraph (f) from text which read: "Federal act" means the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 301 to 321, 331 to 333, 334 to 343-3, 344 to 346a, 347, 348 to 356c, 358 to 360, 360b to 360dd, 360hh to 363, 371 to 376, and 378 to 397."; revised paragraph (h), subparagraph (iv) from text which read: "Any substance used in accordance with a sanction or approval granted before the enactment of the food additives amendment of 1958, Public Law 85-929, 72 Stat. 1784, pursuant to the federal act, the poultry products inspection act, Public Law 85-172, 71 Stat. 441, 21 U.S.C. 451 to 471, or the meat inspection act of March 4, 1907, chapter 2907, 34 Stat. 1258."; deleted former paragraph (h) which read: "Food concession" means a food storage, preparation, or dispensing operation at a state or county fair."; in paragraph (i), substituted "2005" for "1999"; redesignated former paragraphs (i) and (j) as (j) and (k); redesignated former paragraph (k), opening paragraph and subparagraphs (i), and (iii)-(v) as paragraph (n), opening paragraph and subparagraphs (i)-(iv); deleted former paragraph (k), subparagraph (ii) which read: "A food concession."; in paragraph (n), opening paragraph, following "commissary," inserted "food concession,"; and redesignated former paragraph (l) as (o).

The 2008 amendment in paragraph (k), inserted "Food processing plant does not include a maple syrup producer."

LexisNexis® and Other Annotations

Federal aspects:

Food, drugs, and cosmetics. 21 USCS §§301-321, 333, 334-334-3, 344-346a, 347, 348-356c, 358, 359, 360, 360-360dd, 360hh-363, 371-376, 378-397.

LexisNexis® Michigan analytical references:

Michigan Law and Practice, Public Health and Welfare §§71, 76.

Research references:

35A Am Jur 2d, Food §§1-5.

I to P. [MSA § 12.933(1109)]

Sec. 1109. As used in this act:

(a) "Imminent or substantial hazard" means a condition at a food establishment that the director determines requires immediate action to prevent endangering the health of people.

(b) "Inspection" means the checking or testing of observable practices against standards established in or adopted by this act, accompanied by a report of findings.

(c) "Juice" means the aqueous liquid expressed or extracted from 1 or more fruits or vegetables, purees of the edible portions of 1 or more fruits or vegetables, or any concentrates of such liquid or puree.

(d) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article and includes a requirement imposed under this act that any word, statement, or other information appearing on the display also appear on the outside container or wrapper of the retail package of the article or be easily legible through the outside container or wrapper.

(e) "Labeling" means all labels and other written, printed, or graphic matter upon an article, any of its containers or wrappers, or accompanying the article.

(f) "License limitation" means an action by which the director imposes restrictions or conditions, or both, on a license of a food establishment.

(g) "License holder" means the entity that is legally responsible for the operation of the food establishment including the owner, the owner's agent, or other person operating under apparent authority of the owner possessing a valid license to operate a food establishment.

(h) "Limited wholesale food processor" means a wholesale food processor that has \$25,000.00 or less in annual gross wholesale sales made or business done in wholesale sales in the preceding licensing year, or \$25,000.00 or less of the food is reasonably anticipated to be sold for the current licensing year. Only the food sales from the wholesale food processor operation are used in computing the annual gross sales under this subdivision.

(i) "Local health department" means that term as defined in section 1105 of the public health code, MCL 333.1105, and having those powers and duties as described in part 24 of the public health code, MCL 333.2401 to 333.2498.

(j) "Milk product" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk product does include dietary dairy products, dairy-based infant formula, ice cream and other frozen desserts, cheese, butter, and any other product derived from milk.

(k) "Misbranded" means food to which any of the following apply:

(i) Its labeling is false or misleading in any particular.

(ii) It is offered for sale under the name of another food.

(iii) It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

(iv) Its container is so made, formed, or filled as to be misleading.

(v) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations as are permitted and exemptions as to small packages as are established by rules prescribed by the department.

(vi) Any word, statement, or other labeling required by this act is not prominently placed on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by this act or under the federal act, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(viii) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been

prescribed by this act or rules and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard.

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

(x) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based upon practicality.

(xi) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 403(q) of the federal act, 21 USC 343.

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

(xiii) It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

(l) "Mobile food establishment" means a food establishment operating from a vehicle or watercraft that returns to a licensed commissary for servicing and maintenance at least once every 24 hours.

(m) "Mobile food establishment commissary" means an operation that is capable of servicing a mobile food establishment.

(n) "Person" means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.

(o) "Pesticide chemical" means any substance that, alone, in chemical combination, or in formulation with 1 or more other substances, is a pesticide within the meaning of the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y, and is used in the production, storage, or transportation of raw agricultural commodities.

(p) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(q) "Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.

History:

Pub Acts 2000, No. 92, Ch. I, § 1109, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000 (see 2000 note below); amended by Pub Acts 2002, No. 487, imd eff June 27, 2002; 2007, No. 113, imd eff October 16, 2007, by enacting § (2)(2) eff April 1, 2008 (see 2007 note below).

Editor's notes:

Pub Acts 2000, No. 92, § 1117, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000, provides:

"Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

"(2) Until 6 months after the effective date of this act, compliance with the standards of the design, construction, and equipment of a food service establishment approved under former sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913, 12916, and 12921 of the public health code, MCL 333.12901, 333.12902, 333.12903, 333.12904, 333.12905a, 333.12906, 333.12907, 333.12908, 333.12910, 333.12911, 333.12912, 333.12913, 333.12916, and 333.12921, is considered compliance with this act.

"(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act."

Pub Acts 2007, No. 113, enacting § 3, imd eff October 16, 2007, provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Bill No. 595 of the 94th Legislature [Pub Acts 2007, No. 114] is enacted into law."

Effect of amendment notes:

The **2002 amendment** added paragraph (g); redesignated former paragraphs (g)-(m) as (h)-(n); and in subsection (j) deleted "catering" before "food establishment".

The **2007 amendment** added paragraphs (b), (c), and (j); redesignated former paragraphs (b)-(n) as (d)-(i) and (k)-(q); in paragraph (k), subparagraph (xi), following "21" substituted "USC" for "U.S.C."; and revised paragraph (o) from text which read: "Pesticide chemical" means any substance that, alone, in chemical combination, or in formulation with 1 or more other substances, is a pesticide within the meaning of the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i, 136j to 136r, and 136s to 136y, and is used in the production, storage, or transportation of raw agricultural commodities."

LexisNexis® and Other Annotations**Federal aspects:**

Food, drugs, and cosmetics. 21 USCS §§301-321, 333, 334-334-3, 344-346a, 347, 348-356c, 358, 359, 360, 360-360dd, 360hh-363, 371-376, 378-397.

LexisNexis® Michigan analytical references:

Michigan Law and Practice, Public Health and Welfare §§71, 77.

Research references:

35A Am Jur 2d, Food §§1-5.

R to W. [MSA § 12.933(1111)]

Sec. 1111. As used in this act:

(a) "Raw agricultural commodity" means any food in its raw or natural state including fruits that are washed, colored, or otherwise treated in their unpeeled natural form before marketing.

(b) "Regulatory authority" means the department, the local

health department, or the authorized representative having jurisdiction over the establishment.

(c) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment, but does not include a food processing plant.

(d) "Retail grocery" means an operation that sells or offers to sell food to the consumers for off-premises consumption. Off-premises consumption does not include take-out food intended for immediate consumption.

(e) "Rules" means administrative rules promulgated under this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(f) "Smoked fish rules" means regulation no. 285.569 of the Michigan administrative code, promulgated under former 1968 PA 39.

(g) "Special transitory food unit" means a temporary food establishment that is licensed to operate throughout the state without the 14-day limits or a mobile food establishment that is not required to return to a commissary.

(h) "Sulfiting agents" means any of the following:

- (i) Sulfur dioxide.
- (ii) Sodium sulfite.
- (iii) Sodium bisulfite.
- (iv) Potassium bisulfite.
- (v) Sodium metabisulfite.
- (vi) Potassium metabisulfite.

(i) "Temporary food establishment" means a food establishment which operates at a fixed location for a temporary period not to exceed 14 consecutive days.

(j) "Temporary license" means a written authorization issued by the director to operate for a specified limited time period.

(k) "Transient tenant" means a person who rents a room in a bed and breakfast for fewer than 30 consecutive days.

(l) "Vending machine" means a self-service device offered for public use that, upon activation by a coin, token, card, key, or paper currency, dispenses unit servings of food or beverages without the necessity of replenishing the device between each vending operation. Vending machine does not include any of the following:

(i) A device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk ball gum, nuts, and panned candies.

(ii) A water-dispensing machine that is registered under chapter IV.

(m) "Vending machine location" means the room, enclosure, space, or area in which 1 or more vending machines are installed and operated.

(n) "Wholesale" means selling to retailers or jobbers rather than directly to consumers.

(o) "Wholesale food processor" means an operation that pro-

cesses, manufactures, packages, or labels food for wholesaling.

(p) "Wild game" means animals from their natural state and not cultivated, domesticated, or tamed.

History:

Pub Acts 2000, No. 92, Ch. I, § 1111, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000 (see 2000 note below).

Editor's notes:

Pub Acts 2000, No. 92, § 1117, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000, provides:

"Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

"(2) Until 6 months after the effective date of this act, compliance with the standards of the design, construction, and equipment of a food service establishment approved under former sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913, 12916, and 12921 of the public health code, MCL 333.12901, 333.12902, 333.12903, 333.12904, 333.12905a, 333.12906, 333.12907, 333.12908, 333.12910, 333.12911, 333.12912, 333.12913, 333.12916, and 333.12921, is considered compliance with this act.

"(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act."

Statutory references:

Chapter IV, above referred to, is §§289.4101 et seq.

LexisNexis® and Other Annotations

Federal aspects:

Food, drugs, and cosmetics. 21 USCS §§301-321, 333, 334-334-3, 344-346a, 347, 348-356c, 358, 359, 360, 360-360dd, 360hh-363, 371-376, 378-397.

LexisNexis® Michigan analytical references:

Michigan Law and Practice, Public Health and Welfare § 76.

Research references:

35A Am Jur 2d, Food §§1-5.

§ 289.1113. Terms defined in act; meanings. [MSA § 12.933(1113)]

Sec. 1113. A term defined in the food code has the same meaning when used in this act, except as specifically defined in this act.

History:

Pub Acts 2000, No. 92, Ch. I, § 1113, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000 (see 2000 note below).

Editor's notes:

Pub Acts 2000, No. 92, § 1117, imd eff May 8, 2000, by § 1117(1) eff November 8, 2000, provides:

"Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

"(2) Until 6 months after the effective date of this act, compliance with the standards of the design, construction, and equipment of a food service establishment approved under former sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913, 12916, and 12921 of the public health code, MCL 333.12901, 333.12902, 333.12903, 333.12904, 333.12905a, 333.12906, 333.12907, 333.12908, 333.12910, 333.12911, 333.12912, 333.12913, 333.12916, and 333.12921, is considered

[Appendix Z (Exhibit "J-1")]: See, Exhibit "J-1", pgs. 1-4; (2) As stated in P.D. 03.02.130(Y)

APPENDIX "Z"