



United States
Department of
Agriculture

AUG 05 2009

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

Jon Stallings
President
Red Toe Sodas LLC
P.O. Box 78947
Atlanta, Georgia 30357

Dear Mr. Stallings:

We have received your petition requesting an exemption of Red Toe Soda LLC, Orange Wave, Citrus Rush and Wild Berry carbonated beverages from the "foods of minimal nutritional value" as defined in 7 CFR Part 210.11 (a)(2) and Part 220.2 (i-1).

The laboratory nutritional analysis submitted contains all the data required to determine whether or not these products are foods of minimal nutritional value. In addition, you have indicated that no discrete nutrients were added to these products before the nutrition testing occurred.

Nutrient analysis based upon "per serving" data shows that one nutrient (Vitamin C) is greater than 5% of the Reference Daily Intake (RDI). Therefore, these products are exempt from the "soda water" category of "foods of minimal nutritional value" [7 CFR Part 210 Appendix B (a)(1) and Part 220 Appendix B (1)].

The Department of Agriculture does not prohibit the sale of the above listed products in a school food service area during meal periods. State agencies and school food authorities maintain the final right to restrict such sales. If there are any changes to the formulation that would affect the ingredient statement or Vitamin C content, these products must be resubmitted for exemption.

It is also important to remember that the only marketing language permitted by FNS for both print and electronic product literature is as follows: "Exempt from the "soda water" category of "Foods of Minimal Nutritional Value." USDA symbols or logos are intended for the official use of the Department of Agriculture only and must not be used for marketing materials or websites. Modified logos that have the appearance of an endorsement made by the Department are also not permitted; logos are expressly excluded from use to imply endorsement of a commercial product or service. Please ensure that all product literature from Red Toe Soda LLC, is compliant with the marketing language and use of logos requirements.

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A memo will be sent to our regions adding the above products to the "Exemptions Under Competitive Foods Regulation" list. If there are additional questions please contact my staff at (703) 305-2609.

Sincerely,

Melissa A. Rothstein

for CYNTHIA LONG
Director
Child Nutrition Division