U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

MAR 2 4 2004

DOT-E 13286

EXPIRATION DATE: February 28, 2006

(FOR RENEWAL, SEE 49 CFR § 107.109)

1. GRANTEE: Nestle Ice Cream Company, LLC
Oakland, CA

2. PURPOSE AND LIMITATION:

a. This exemption authorizes the transportation in commerce of certain non-refillable DOT-2Q metal containers that have received alternative testing methods for use in transporting limited quantities of compressed gases. This exemption provides no relief from the Hazardous Materials Regulations (HMR) other than as specifically stated herein.

b. The safety analyses performed in development of this exemption only considered the hazards and risks associated with transportation in commerce. The safety analyses did not consider the hazards and risks associated with consumer use, use as a component of a transport vehicle or other device, or other uses not associated with transportation in commerce.

3. REGULATORY SYSTEM AFFECTED: 49 CFR Parts 106, 107 and 171-180.

4. REGULATIONS FROM WHICH EXEMPTED: 49 CFR § 173.306(a)(3)(v) in that alternative testing will be performed in lieu of the hot water bath test.

5. BASIS: This exemption is based on the application of Nestle Ice Cream Company, LLC dated July 29, 2003 submitted in accordance with § 107.105 and the public proceeding thereon.

6. HAZARDOUS MATERIALS (49 CFR § 172.101):

Hazardous Material Description			
Proper Shipping Name	**Hazard Class/ Division**	**Identi- fication Number**	**Packing Group**
Aerosols, nonflammable (each not exceeding 1 L capacity)	2.2	UN1950	N/A
Consumer commodity	ORM-D	None	N/A

7. SAFETY CONTROL MEASURES:

a. PACKAGING - Prescribed packaging is a non-refillable DOT Specification 2Q inside container meeting all requirements of 49 CFR §178.33a.

b. TESTING -

(1) Each empty completed container must be leak tested with air at a pressure of at least 75 psig. If the leak rate of the container exceeds 4cc/10 seconds, that container must be rejected.

(2) A sample of forty-eight empty completed containers per hour must be leak tested with air at a pressure of at least 135 psig. The containers must be tested under water and visually inspected for leaks. If any container in the sample is determined to be leaking or deformed, that container must be rejected.

(3) One empty completed container per seamer head per hour (approximately six containers per 18,000) must be pressure tested to destruction. If the test container buckles below 180 psig or bursts below 270 psig, the container must be rejected.

(4) If any container tested in 7.b.(2) or (3) is rejected, all represented containers must be rejected, or a statistical resampling may be

performed as follows: Another sample of 36 containers per pallet layer must be retested. If any one container of the 36 containers does not satisfy the test requirements, then the entire pallet must be rejected or 100% of the remaining containers must be tested with any container failing the test rejected.

(5) A sample of 13 containers per batch of 24,000, as filled for shipment, must be tested in a hot water bath at 50°C. Acceptable containers must show no evidence of leakage, distortion, or other defect.

c. OPERATIONAL CONTROLS -

(1) Containers must be shipped in accordance with all requirements of 49 CFR § 173.306(a)(3) except the hot water bath test requirements of § 173.306(a)(3)(v).

(2) Containers must be kept in a frozen state at approximately -23°C during transportation.

(3) Each outside packaging must be marked "INSIDE CONTAINERS CONFORM WITH DOT-E 13286"

8. SPECIAL PROVISIONS:

a. A person who is not a holder of this exemption who receives a package covered by this exemption may reoffer it for transportation provided no modification or change is made to the package or its contents and it is reoffered for transportation in conformance with this exemption and the HMR.

b. A current copy of this exemption must be maintained at each facility where the package is offered or reoffered for transportation.

9. MODES OF TRANSPORTATION AUTHORIZED: Motor vehicle, rail freight, and cargo vessel.

10. MODAL REQUIREMENTS: A current copy of this exemption must be carried aboard each cargo vessel, aircraft or motor vehicle used to transport packages covered by this exemption. The shipper must furnish a copy of this exemption to the air carrier before or at the time the shipment is tendered.

11. COMPLIANCE: Failure by a person to comply with any of the following may result in suspension or revocation of this exemption and penalties prescribed by the Federal hazardous materials transportation law, 49 U.S.C. 5101 et seq:

- All terms and conditions prescribed in this exemption and the Hazardous Materials Regulations, 49 CFR Parts 171-180.

- Persons operating under the terms of this exemption must comply with the security plan requirement in Subpart I of Part 172 of the HMR, when applicable.

- Registration required by § 107.601 et seq., when applicable.

Each "Hazmat employee", as defined in § 171.8, who performs a function subject to this exemption must receive training on the requirements and conditions of this exemption in addition to the training required by §§ 172.700 through 172.704.

No person may use or apply this exemption, including display of its number, when this exemption has expired or is otherwise no longer in effect.

12. REPORTING REQUIREMENTS: The carrier is required to report any incident involving loss of packaging contents or packaging failure to the Associate Administrator for Hazardous Materials Safety (AAHMS) as soon as practicable. (Sections 171.15 and 171.16 apply to any activity undertaken under the authority of this exemption.) In addition, the holder(s) of this exemption must inform the AAHMS, in writing writing, of any incident involving the package and shipments made under the terms of this exemption.

Issued in Washington, D.C.:

MAR 2 4 2004
(DATE)

Robert A. McGuire
Associate Administrator for
Hazardous Materials Safety

Address all inquiries to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590. Attention: DHM-31.

Copies of this exemption may be obtained by accessing the Hazardous Materials Safety Homepage at http://hazmat.dot.gov/exemptions Photo reproductions and legible reductions of this exemption are permitted. Any alteration of this exemption is prohibited.

PO: WEST FREEMAN