



Distribuidora de la Rosa S.A. de C.V.

Camino Real de Colima #795

45609, Tlaquepaque, JAL, Mexico

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Tlaquepaque, Jalisco, Mexico – August 17th 2020.

**California Environmental Protection Agency (CEPA)
OEHHA (Office of Environmental Health Hazard Assessment)**

Provided Electronically to: <https://oehha.ca.gov/comments> and Monet.Vela@OEHHA.ca.gov

Monet Vela

Regulations Coordinator

Office of Environmental Health Hazard Assessment

1001 I Street

Sacramento, CA 95812

Dear Monet Vela,

As stated in our letter sent on May22nd 2019, in attention to Allan Hirsch (Chief Deputy Director) and/or Carl Denigris (Staff Counsel) and/or Elizabeth Marder Ph.D. (Environmental Scientist) and/or Lauren Zeise (Director), the following letter is provided in behalf of the companies commonly referred as Dulces de la Rosa (Distribuidora de la Rosa S.A. de C.V., Chupaletas S.A. de C.V., Caramelos de la Rosa S.A. de C.V. and Mazapan de la Rosa S.A. de C.V.) .

Our companies would like to express in writing our comments to the adoption of new chapter and section, TITLE 27, CALIFORNIA CODE OF REGULATIONS, CHAPTER 3: NATURALLY OCCURRING LEAD IN CANDY, SECTION 28500: NATURALLY OCCURRING LEVELS OF LEAD IN CANDY, where the Lead “Naturally Occurring Level” of 0.02ppm is set and explained in your “Naturally Occurring Level” of 0.02ppm is set and explained in the “Technical Support Document for proposed adoption of Title 27 of the California Code of Regulations, Chapter 3, Section 28500, March 2019”

De la Rosa is constantly innovating and including natural ingredients in our products. Dulces de la Rosa has always made a top priority to care about our consumers' health and well-being. For this reason we utilize first quality raw materials, and comply with the limits set on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Commonly known as Proposition 65), keeping our facilities certified for several years. Moreover, we've also have maintained a Food Safety Systems Certification FSSC 22000 for many years.

Dulces de la Rosa and its subsidiary plants is a privately held organization and we are the largest manufacturer of confectionery products in Mexico. Our company ships over 600 full truckloads of candy to the United States, Canada and 14 other worldwide markets. Our plants manufacture a diverse range of sweets and chocolates and amongst these you will find what has been labelled Mexican Style candies containing tamarind and chili. We work closely with more than 74 distributors in the United States and our most important marketplace is California, where these companies provide a stable employment to many in the US-Latino community in your state.

Distribuidora De la Rosa S.A. de C.V. is a long time member of the National Confectionery Association (NCA) and agrees and adheres totally to the comments made by the NCA on the letter sent to your attention regarding your proposed rulemaking on Title 27, Section 28500. The data provided and the bias that has been shown by OEHHA needs to be discussed more thoroughly.

We would like to respectfully request that the new proposed Lead “Naturally Occurring Level” of 0.02ppm be reconsidered . Our petition is supported by the following :

- a) The Technical Support Document does not provide a satisfactory **Statistical approach**, showing only some results of some tests to determine and support the selection of arbitrary adopted levels for the main raw materials listed (Chili peppers and chili powder, Tamarind, Food-grade salt, Sugar, Food-grade silicon dioxide and Food-grade titanium dioxide).
- b) The **Limits of Detection** for the accredited labs to show compliance to the default limit determined by the California Attorney General as part of a 2006 consent judgment in *People vs Alpro Alimentos Proteicos (Los Angeles County Superior Court Case #BC318207 and related cases)* are not as low as required to establish a Statistical Process Control and set control limits for the manufacturing process or raw material lead content trends and performance. Provided data only conveys when product is out of specification. (i.e. CIATEJ, with a detection limit of 0.02ppm).



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The data shown on <https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FDBPrograms/FoodSafetyProgram/LeadInCandy.aspx> indicates for most of the results ND (i.e. Food and Drug Laboratory with a No Detection level of 0.05ppm)

- c) We disagree with your proposed ruling as it is **targeting certain candy manufacturers** and products (chili and tamarind), usually found in Mexican traditional candies and confections. It is our impression that such targeting may be viewed to show discrimination and/or ethnic bias against some manufacturers and /or California consumers. It provides a "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. The discrimination may be explicit on the face of the law or contained within the law's effect or purpose." [Zenith/Kremer Waste Sys. v. Western Lake Superior Sanitary Dist., 572 N.W.2d 300 (Minn. 1997)]. Most of the candies flavored with chili and tamarind are manufactured in Mexico and imported to California, and even the Technical Support Document mentions "Most manufacturers of candies containing chili and/or tamarind are located outside of California, with many located in Mexico."
- d) The **kind of chilis** mentioned to determine the "Lead Naturally Occurring Level" on the Technical Support Document are varieties of the *longum* group of the species *Capsicum annuum* (*C. annuum* L.), Anaheim Chili and Guajillo Chili. The latter being one of the many chilis varieties used in candies and confections, but not the only variety. Anaheim chili is not a common chili kind found on traditional candies. Perhaps Chili Ancho and Chili de Arbol are more commonly used.
- e) The Technical Support Document refers to chili crops from California and Mexico, without specifying an exact **Geographical location**, and without considering that the levels of lead the soil may vary from location to location.

However, we emphatically ask for re-consideration due to the following three matters; please note:

- f) There is no mention or even consideration of the **Time required and enforcement** of these limits, and the impact to the retailers, distributors and manufacturers. Some if not most of the products exhibit a long shelf life (i.e. in the range of 24 months), meaning that a candy produced today would be within the expiration date in about two years, and perfectly suitable to be sold and consumed. Moreover, we are in the midst of a worldwide pandemic that has severed our ability to respond as quickly as all would want.
- g) **Other agricultural food products**, with larger daily consumption are not considered (like figs, strawberries, almonds, cocoa, nuts, juices, etc.) If the reason for the proposed limit is to protect California residents, other foods that are consumed more frequently and in larger amounts should be considered as higher risk than candies.
- h) **Other food products that contain tamarind and/or chili** and sold in the US marketplace including but not limited to California are not included in the scope of this proposal (i.e. Thai, Chinese, Hindi foods, etc.).

These comments were publically expressed at the Public Hearing that took place on May 8th, 2019 at 10:00 a.m. in the Sierra Hearing Room, California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California, and are now provided electronically to: <https://oehha.ca.gov/comments>

OUR PROPOSAL :

Dulces de la Rosa companies would like to propose that the Lead "Naturally Occurring Level" be initially reduced from the existing default level of 0.1ppm down to 0.05ppm, and after a period of 2 years (which should provide enough data on the real Lead Natural Occurring Level) meet again with this Office to review if the "Lead Naturally Occurring Level" can be reduced even further. It will also provide sometime to educate our agricultural partners and quality control teams to continue with HACCP and Good Manufacturing practices.

Respectfully,


Victor H. Zavala

Head Quality Control – Dulces de la Rosa

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