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Attorney General Ken Paxton
Office of the Attorney General
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Dear Attorney General Paxton:

As the leading trade association representing the dietary supplement and functional food industry, the Council for Responsible Nutrition (CRN)[1] respectfully offers the following comments regarding your office's recently announced investigation into protein powder manufacturers.

By way of background, claims that protein powders contain "unsafe" levels of heavy metals are often based on studies with significant methodological limitations and risk assessment approaches that do not accurately reflect established scientific and regulatory principles. Reports from organizations such as the Clean Label Project and Consumer Reports are frequently cited as evidence that protein powders pose a unique safety concern. However, a closer examination of these reports reveals important shortcomings that should be carefully considered before drawing conclusions about product safety.

A principal weakness of both reports is their reliance on California Proposition 65 warning thresholds as a benchmark for evaluating product safety. Proposition 65 warning levels are not health-based regulatory limits and were never intended to distinguish safe products from unsafe products. Rather, they are highly conservative notification thresholds designed to trigger consumer warnings if a product exceeds the established level. In the case of

[1] The Council for Responsible Nutrition (CRN), founded in 1973 and based in Washington, D.C., is the leading trade association representing the dietary supplement and functional food industry. Bringing together manufacturers, ingredient suppliers, and service providers, CRN unites its member companies around a shared commitment to science, transparency, and responsible business practices—advancing a strong, credible marketplace that supports consumer health and industry growth.

In an increasingly complex regulatory and media environment, CRN serves as the industry's front line—shaping science-based policy, defending market access, and countering misinformation. Through strategic advocacy, self-regulatory leadership, voluntary guidelines, and evidence-based communications, CRN ensures that responsible companies are recognized, protected, and positioned to innovate and compete. Learn more at crnusa.org and follow us on LinkedIn and X @CRN_Supplements.

reproductive risks, the Prop 65 threshold at which a product must be labeled is 1/1000th of the level at which the substance has been demonstrated to cause ham, Exceeding a Proposition 65 warning level does not establish that a product—or a particular substance present in the product—presents a health risk, nor does it indicate that a product violates federal food safety standards.

The Clean Label Project report, in particular, relies heavily on Proposition 65 thresholds to characterize products as problematic. Additionally, the report provides limited transparency regarding critical elements of its methodology, including sample selection, analytical procedures, quality assurance controls, and risk assessment methods. Without full transparency and peer review, it is difficult for independent scientists and regulators to assess the validity and significance of the report's findings. And thus, when an enforcement body relies on the findings of Clean Label Project report, making enforcement decisions based on those findings is particularly tenuous.

Similarly, Consumer Reports' 2025 investigation evaluated only 23 protein products and assessed lead exposure using a self-selected "level of concern" of 0.5 micrograms per day, a value derived from Proposition 65 rather than federal regulatory standards or health-based exposure limits. Products exceeding this threshold were characterized as containing "high" levels of lead, despite the fact that the benchmark itself was not developed as a determination of product safety. As a result, the report may overstate potential risk by relying on screening levels that are substantially more conservative than exposure-based approaches used by FDA and other public health authorities.

Equally important, these reports fail to adequately acknowledge the ubiquitous presence of naturally occurring heavy metals in the food supply. Trace amounts of lead, cadmium, arsenic, and mercury are present in soil, water, and air and are therefore found at low levels in many foods commonly consumed as part of a healthy diet. Rice, spinach, kale, sweet potatoes, carrots, cocoa, dark chocolate, nuts, seeds, grains, legumes, fruits, and vegetables can all contain measurable amounts of naturally occurring heavy metals. Protein powders that are derived from agricultural ingredients such as whey, milk, soy, peas, hemp, and rice, are subject to the same environmental conditions as other food crops. The presence of trace amounts of heavy metals in these ingredients is therefore not unexpected and does not, by itself, indicate a safety concern. Why should protein powders be singled out for more onerous scrutiny, and perhaps much stricter testing and labeling, than the range of produce that also composes a healthy diet?

Furthermore, advances in analytical chemistry now allow laboratories to detect contaminants at extraordinarily low concentrations, often in the parts-per-billion range. The mere detection of a substance does not establish that it poses a health risk. Toxicological risk is determined by exposure—that is, the amount consumed, the duration of exposure, bioavailability, and total intake from all dietary sources—not simply whether a substance can be detected using highly sensitive analytical methods.

For these reasons, reports that characterize protein powders as inherently unsafe based primarily on Proposition 65 warning thresholds or similarly conservative screening levels risk creating a misleading impression for consumers and policymakers. A scientifically sound assessment should evaluate actual exposure, consider total dietary intake, compare exposure levels against established health-based toxicological benchmarks, and recognize that trace levels of heavy metals are a naturally occurring feature of the food supply rather than a concern unique to protein powders.

Focusing exclusively on protein powders without considering the broader dietary context may incorrectly suggest that these products present a unique source of risk. In reality, trace levels of heavy metals are ubiquitous throughout the food environment. The relevant scientific and regulatory question is not whether a heavy metal can be detected, but whether the level of exposure poses a meaningful risk to human health. That determination should be based on established toxicological principles and comprehensive exposure assessments rather than the mere presence of trace amounts.

In conclusion, CRN respectfully cautions the Attorney General's office against proceeding with an investigation based on the headline-grabbing tests of consumer organizations whose agenda is to identify the "best" and "worst" products available to consumers, not to ascertain unsafe or violative products. Both undertakings have their place, but they serve different purposes. Even a product that does not receive a "buy" recommendation from one of these groups, may be perfectly lawful. It would be imprudent to presume that a product that contains detectible levels of a heavy metal is presumptively harmful or unlawful. Thank you for your consideration of our views.

Respectfully,





Steve Mister
President & CEO

Dr. Andrea Wong
Senior Vice President & Chief Science Officer