



Office of the Attorney General

40 Capitol Square SW
Atlanta, Georgia 30334-1300

CHRISTOPHER M. CARR
ATTORNEY GENERAL

www.law.ga.gov
(404) 458-3600

June 13, 2023

The Honorable Robert Califf, M.D.
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, Maryland 20993

Dear Commissioner Califf:

As the chief legal officer of the State of Georgia, I am writing to direct your focus to an ongoing issue in our state that requires further action by the Food and Drug Administration (FDA). That issue is illegal disposable e-vapor products inundating Georgia's communities and endangering our youth. Flavored disposable e-cigarettes are uniquely positioned to devastate our children due to their child-friendly flavors and high doses of nicotine. I consider it a step in the right direction to see the recent actions by the FDA including issuing an import alert and warning letters to some of the most popular brands of flavored disposable e-cigarettes.¹ I am hopeful that this will have some impact on the degree of unregulated foreign e-cigarettes we see in Georgia. For years foreign markets, most notably China, have flooded U.S. shelves with unregulated e-cigarettes.² Chinese manufacturers are shipping these products to our shores at an alarming rate. Just last year, China shipped 700,000,000 harmful e-cigarettes to the United States.³ Without stronger enforcement actions and collaboration with the FDA's enforcement division on the state and local level, I fear that millions of illegal disposable vapor products will continue to fall into the hands of our children.

The FDA's recent import alert and notices show progress towards removing these harmful products from store shelves across the country but I feel more needs to be done. Esco Bars are among the leading disposable e-cigarette brands in Georgia that are sold in kid-friendly

¹ <https://www.washingtonpost.com/business/2023/05/12/e-cigarette-vaping-fda/>

² <https://www.gao.gov/products/gao-17-515r>

³ 2US ITC Dataweb China Exports HTS 8543.40.33.30, 85433.40.00.40, 8543.90.88.50, 2019-2022; RAISC internal & Grail disposable e-cig % estimates.

flavors but they are not the only ones. The FDA's recent warning specifically references Esco Bars but does not more broadly address certain other brands in the marketplace.⁴ This selective and inconsistent approach has muddled the regulatory landscape across Georgia for both the state's retailers and consumers. Additionally, consumers are uncertain about which flavored disposable products have been authorized by federal authorities. Perhaps the lack of clarity risks consumers believing that unauthorized products are authorized because the FDA has not issued any guidance on the brand. This fog created by the FDA's approach, combined with enforcement challenges at the state and local levels, has created a climate where bad actors may continue to exploit the system. Despite the FDA's recent actions, these bad actors continue to addict our children, exposing them to fentanyl-laced and other potentially deadly products. Every day, we are risking the health and safety of Georgia's youth.

Given the urgency of this problem, I ask that the FDA take further action to clarify the recent policy and address the warranted remaining products in the market. With more clarity we can collectively begin making real progress in the fight to protect our children from these addictive products.

We very much appreciate your attention to this matter and look forward to your continued progress. Public safety and protecting our children are our top priorities. Please use the legal authority given to your agency to give appropriate attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Carr", with a long horizontal flourish extending to the right.

Christopher M. Carr
Georgia Attorney General

⁴<https://www.fda.gov/tobacco-products/ctp-newsroom/fda-puts-firms-responsible-esco-bars-and-breeze-two-popular-disposable-e-cigarette-brands-notice>