



April 5, 2019

The Kroger Co.  
Attn: W. Rodney McMullen, Chairman and CEO  
1014 Vine Street  
Cincinnati, OH 45202

Dear Mr. McMullen,

We all share the important responsibility of keeping harmful and addictive tobacco products out of the hands of kids. Retailers in particular are on the frontlines of these efforts to reduce the health consequences of tobacco use and nicotine dependence. Because tobacco use is almost always initiated and established during adolescence, early intervention—including making sure tobacco products aren't being sold to minors—is critical.

Last month, the Food and Drug Administration (FDA or the Agency) highlighted vigorous enforcement actions that the Agency has taken to combat the illegal sales of tobacco products to minors. The number of children using tobacco products, particularly e-cigarettes, has reached epidemic levels. We remain committed to protecting youth from the dangers of all tobacco products.

We have identified The Kroger Co. as one of several national retail chains, either corporate-owned or franchised, who have high rates of violative inspections, with more than 15 percent of stores inspected having illegally sold tobacco products to minors since the inception of the FDA's retailer compliance check inspection program in 2010. Sadly, The Kroger Co. had a violation rate of approximately 23 percent.

This violative history is disturbing and cannot possibly come as a surprise to corporate leadership. In addition to issuing a warning letter, civil money penalty, or no-tobacco-sale order, as applicable, to violating retailers, FDA also makes retailer compliance check results publicly available in a searchable database that can be accessed by any member of the public, including by the corporate management of retailers themselves.<sup>1</sup>

These illegal sales must stop.

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<sup>1</sup> The retailer inspection database is accessible at:

[https:// www.accessdata.fda.gov/scripts/oc/inspect\\_ions/oc\\_insp\\_searching.cfm](https://www.accessdata.fda.gov/scripts/oc/inspect_ions/oc_insp_searching.cfm)

Violating the law preventing sales of tobacco products to minors, and paying associated fines and penalties, should not simply be viewed as a cost of doing business. The stakes are too high for our young people and our country's decades-long fight to reduce the morbidity and mortality that accompanies tobacco product use. I hope that The Kroger Co. will take seriously not only your legal obligations, but also the substantial public health impact that you can make by preventing tobacco product sales to minors at your stores.

FDA requests that, within 30 days of receipt of this letter, you provide a written response that includes a detailed plan, including timeframes, to address and mitigate illegal sales to minors. For instance, this plan may include limiting or discontinuing sales of tobacco products, developing or strengthening any internal program or policies you have aimed at preventing illegal sales of tobacco products to minors, etc.

The requested information should be sent to:

Jill Atencio  
Director, Division of State Programs  
Center for Tobacco Products, Office of Compliance and Enforcement  
[Jill.Atencio@fda.hhs.gov](mailto:Jill.Atencio@fda.hhs.gov)

Given the importance of this issue, I also request that you provide FDA an acknowledgement of receipt of this letter within 15 days.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Gottlieb MD". The signature is fluid and cursive, with the letters "S" and "G" being particularly large and stylized.

Scott Gottlieb, M.D.  
Commissioner of Food and Drugs

cc: Christine S. Wheatley, Group Vice President and General Counsel