

# Myths vs. FACTS on H.R. 1854



In response to some misinformation promoted by opponents of the H.R. 1854 we want to take this opportunity to provide the following facts. Data from recent government-funded and government-led studies definitively prove that premium cigars are a unique product category that are almost exclusively enjoyed infrequently by older adults. We encourage you to also read our Setting the Record Straight document and look at the actual data within numerous public health studies.

 *Myth: H.R. 1854 would exempt some cigars, including some inexpensive machine-made cigars, from oversight under the Family Smoking Prevention and Tobacco Control Act (TCA) and FDA regulation.*

 **FACT:** Traditional large and premium cigars, like many products, come in a wide variety of prices —cost is also affected by individual state tobacco taxes. Some traditional large and premium cigars are made by hand-operated, antique machinery. These machines, which require each cigar to be crafted by hand, are significantly different from high-speed machines which churn out thousands of mass-produced products in minutes.

 *Myth: H.R. 1854 would undermine the science-based process created by the TCA for determining the appropriate level of oversight of tobacco products.*

 **FACT:** In passing the Tobacco Control Act, Congress sought to address the issues of youth access to tobacco products as well as the negative health implications of addiction to smoking. Premium cigars, which are enjoyed by adults in moderation, meet neither of those criteria. Hundreds of pages of data have been submitted to FDA, much of it their own research, establishing these facts. As hand-crafted products, premium cigars are dramatically different than cigarettes and other mass-produced tobacco products. The type of consumer and usage patterns specifically identified in the Centers for Disease Control's Population Assessment of Tobacco and Health (PATH) study support the notion that premium cigars are not part of the youth access to tobacco issue.

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*Myth: The fact is that cigar smoking is not limited to adults. The 2018 National Youth Tobacco Survey shows that high school boys smoke cigars (i.e., large cigars, cigarillos, and small cigars) at about the same rate as cigarettes (9.0 percent of high school boys smoke cigars and 8.8 percent smoke cigarettes). Each day, more than 1,900 kids under 18 years old try cigar smoking for the first time, based on the 2017 National Survey on Drug Use and Health.*



**Fact:** The National Youth Tobacco Survey questions group hand-made, premium cigars together with cigarillos and small cigars. These products, unlike hand-made, premium cigars, tend to be sold and consumed differently. An analysis of the PATH study, published in the New England Journal of Medicine, found “no statistically significant use of “traditional cigars” by minors on a daily or frequent basis”. The study’s definition of “traditional cigar” was similar to the language of H.R. 1854.



*Myth: Even the most basic FDA requirements, like ingredient disclosures and warning labels, as well as enforcing youth access laws, would not apply to these products.*



**Fact:** As an all-natural agricultural product that is essentially made by hand, premium cigars should not be required to conform to a bureaucratic method designed for products with complex chemical additives and manufacturing processes. Leaves and water come together to make a premium cigar. Furthermore, former FDA Commissioner Dr. Scott Gottlieb himself stated that products should be regulated based upon where they fall on the “Continuum of Risk.” Based upon this, the public health research is clear: Premium cigars do not warrant the same scrutiny as other products. Covering 30% of a cigar box with a warning label distorts any threat to public health, and nothing in H.R. 1854 allows the industry at any level to avoid enforcement of youth access laws.

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*Myth: Youth are particularly sensitive to price and excluding inexpensive products from any oversight will put children at risk.*



**Fact:** Traditional large and premium cigars are not marketed to nor accessible to youth. They are sold through specialty retail shops which are often small, family owned businesses. Youth are not permitted in premium cigar retail stores and FDA inspection data shows premium cigar stores do not experience age verification violations. Premium cigar retail shop owners and staff are trained and committed to ensuring proper age verification among their customers, and, should H.R. 1854 become law, the age verification inspections would not be affected. Also, premium cigars are cost prohibitive to youth.



*Myth: During the rule-making process, the FDA specifically examined whether “premium” cigars should be excluded from FDA oversight, and, based on its scientific review, concluded that there was no public health justification for exempting any cigars from FDA oversight because all cigars pose significant health risks.*



**Fact:** FDA’s Notice of Proposed Rule-making contained “option 1” to regulate all products in the same manner and “option 2” which would have applied a different framework for traditional large and premium cigars, recognizing the unique characteristics of these hand-crafted products. Despite receiving tens of thousands of comments from adult consumers and detailed data from premium cigar manufacturers, the FDA chose to apply a “one-size-fits-all” approach and not distinguish between mass produced and hand-crafted products. The process under which the FDA made this selection grossly failed to meet required “cost-benefit” and population health risk criteria and shifted the burden to the industry to prove the products should not be regulated. Since that time, the industry has submitted hundreds of pages of additional data —largely from research conducted and/or funded by the FDA, demonstrating traditional large and premium cigars do not fit the criteria for inclusion in the deeming rule. The FDA has also delayed enactments of regulations and is reconsidering proposed rules due to a lack of scientific evidence and equipment to comply with their own rules.

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*Myth: Tobacco manufacturers have a history of modifying their products to avoid public health protections or attain lower tax rates. We are concerned that the number of cigars exempted by H.R. 1854 would increase over time as cigar manufacturers modify their products or change their manufacturing processes to qualify for the exemption.*



**Fact:** H.R. 1854 contains a strong definition of “traditional large and premium cigar” that contains numerous requirements be met by the products which restricts the exemption to a very narrow class of products utilized exclusively by adults in an infrequent manner. The definition explicitly excludes any product containing a flavor additive and requires the product to be made by hand utilizing only a 100% tobacco leaf wrapper. Filters, tips, and other non-tobacco mouthpieces are prohibited and a total weight of 6 pounds per 1,000 count is required. Unlike previous definitions of tobacco products which enabled minor modifications to achieve outcomes such as lower tax rates, the comprehensive definition contained in H.R. 1854 is meticulously written to prevent any product migration in the future and capture only true hand-made, artisan products.



*Myth: In 2009, Congress gave FDA authority over the manufacture, sale and marketing of all tobacco products. The TCA explicitly defines tobacco products as “any product made or derived from tobacco that is intended for human consumption....” Cigars clearly fall under this definition.*



**Fact:** Premium Cigars were not under FDA authority until they were deemed in 2016 by the agency. Since 2016, premium cigars have had to comply with regulations intended for mass market tobacco products such as cigarettes and vaping products despite little commonality between users, usages patterns, and health risks supported by government funded studies. H.R. 1854 would provide clarity on the distinctions and save thousands of jobs and small businesses.