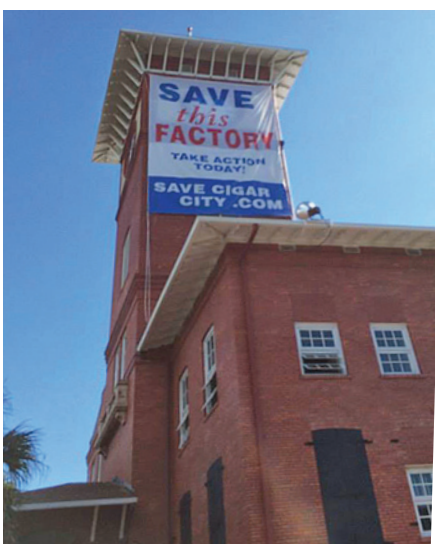
One-Size-Fits-All Regulation Doesn't Work in Tobacco

The realities of how cigars are made and consumed requires a different approach to regulation. **>BY CRAIG WILLIAMSON**

How was your summer? For the cigar industry, which is facing sweeping new federal regulations, the answer is "long and hot." But I am happy and more than a little proud of the fact that our members pulled together to mount an effective Cigar Association of America (CAA) response to the U.S. Food and Drug Administration proposal to regulate cigars and other tobacco products under the Family Smoking Prevention and Tobacco Control Act.

The FDA proposal would create new legal and regulatory frameworks that would impact every element of the cigar supply chain, from manufacturers to consumers.

If CAA has said it once, we've said it a hundred times: attempting to regulate the cigar industry with a one-size-fits-all approach will devastate the industry—endangering jobs, consumer rights, and America's proud cigar tradition.



> As written, even the "Option 2" proposal that would exclude premium cigars from FDA regulation would still mean the end of the line for J.C. Newman's Tampa factory.

Cigars are a unique product that represent a very small part of the overall tobacco industry. To put it in perspective, the cigar category accounts for a mere seven percent of the tobacco industry's business based on revenue, bringing in just $6.7 billion out of a $95 billion industry total per year.

When the FDA opened up the deeming regulation to comments, CAA told the agency our bottom line: cigars are a very different product from cigarettes, and the regulation of cigars poses substantially different issues. In 36 pages of comments, we addressed facts and concerns in every sector of our industry, leaving no stone unturned at this pivotal moment for us.

I can't include all the details of our comments here, but I want to mention a few of the highlights.

To begin with, path-to-market issues raised by the proposal are of critical importance to the cigar industry because they ultimately will affect the future viability of its members. Naturally, the significant differences between cigars and cigarettes make the cigarette framework largely inapplicable to the pre-market review for cigars.

We proposed that the FDA use the date of the proposed deeming regulation (April 25, 2014) as the grandfather date, as opposed to the current proposed date of February 15, 2007. The FDA's proposed date would unfairly disadvantage the cigar industry relative to the cigarette, smokeless, and roll-your-own industries, and would interfere with the cigar industry's ability to market new products and maintain currently marketed products for sale. Ultimately, our goal is to ensure the cigar industry receives fair marketing opportunities.

Another major issue we addressed is the prohibition of free sampling in the FDA's current proposal. This type of restriction would be extremely damaging to the cigar industry, and highlights yet another difference between cigars and cigarettes. In comparison to cigarettes, cigars have limited advertising, and manufacturers rely on in-store events to provide samples and offer discounts. We proposed that the FDA apply a sampling mechanism that is designed to prevent youth access and exposure to tobacco products while permitting adults the opportunity to choose whether to take cigar samples.

We do appreciate that the FDA has recognized the differences between and among cigars, as reflected in the agency's Option 2 proposal that would exclude premium cigars from the scope of its deeming regulation.

Obviously, CAA strongly supports Option 2, but we also proposed revising the definition of a premium cigar as follows. A premium cigar: (1) is wrapped in whole tobacco leaf; (2) contains a 100-percent leaf tobacco binder; (3) is made either by manually combining the wrapper, filler, and binder, or on a machine that has a production rate of less than 1,500 units per hour; (4) has no filter, tip, or non-tobacco mouthpiece, and is capped by hand; and (5) weighs more than six pounds per 1,000 units.

If the FDA decides to procede with Option 1, which would include premium cigars in the scope of regulation, we proposed an alternative pathway for regulation, suggesting that premium cigars be subject to some, but not all, of the requirements that apply to other deemed tobacco products.

It's hard to overstate the implications of this upcoming regulation. That's why the Cigar Association of America has been and will continue to work around the clock to fight for the entire cigar industry and will continue to educate the Washington regulators about how this regulation would impact jobs and consumer rights. S

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