

118TH CONGRESS  
1ST SESSION

# H. J. RES. 99

To amend the Federal Food, Drug, and Cosmetic Act to exempt the premium cigar industry from certain regulations.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2023

Mr. DONALDS (for himself, Mr. HORSFORD, Mr. CUELLAR, Ms. TITUS, Mr. GALLEGRO, Mr. PANETTA, Mr. DIAZ-BALART, and Mr. LANGWORTHY) submitted the following joint resolution; which was referred to the Committee on Energy and Commerce

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## JOINT RESOLUTION

To amend the Federal Food, Drug, and Cosmetic Act to exempt the premium cigar industry from certain regulations.

Whereas premium cigars comprise only 1 percent of all cigars sold in the United States;

Whereas most manufacturers of premium cigars are family-owned small businesses;

Whereas manufacturers of premium cigars help support many communities in Central America, thereby lessening the southern border crisis;

Whereas premium cigars are typically sold in age-controlled retail establishments, such as tobacco specialty shops or cigar bars;

Whereas at the request of the Food and Drug Administration and the National Institutes of Health, the National Academies of Sciences, Engineering, and Medicine (in this resolution referred to as the “NASEM”) convened an expert committee to examine 4 premium cigar topics: product characteristics, patterns of use, marketing and perceptions, and health effects;

Whereas the NASEM expert committee produced a resulting report, published in 2022 and titled “Premium Cigars: Patterns of Use, Marketing, and Health Effects”, which among other things, identified numerous facts regarding premium cigar use;

Whereas the NASEM expert committee found that premium cigars are only used by about 1 percent of the United States adult population;

Whereas the NASEM expert committee found that premium cigar use is less common among youth than among other users and only 0.6 percent of those who reported smoking a premium cigar were under 18 years of age;

Whereas the NASEM expert committee found that premium cigar use is less common among women, non-Hispanic Black persons, and persons with less than a high school education than other users;

Whereas the NASEM expert committee found that premium cigar users are less likely to smoke cigarettes or other cigar types concurrently than other cigar type users;

Whereas the NASEM expert committee found that the frequency and intensity of smoking is lower for premium cigars compared to other types of cigars and cigarettes;

Whereas the NASEM expert committee found that as compared to users of other types of cigars, premium cigar

users are more likely to be never or former cigarette smokers;

Whereas the NASEM expert committee found that there is strongly suggestive evidence that the health consequences of premium cigar smoking overall are likely to be less than those of smoking other types of cigars because the majority of premium cigar smokers are nondaily or occasional users and because they are unlikely to inhale the smoke;

Whereas the NASEM expert committee found that premium cigars are used virtually exclusively by adults, premium cigar use is extremely limited, and premium cigar use poses less physical risk than the use of other tobacco products;

Whereas the definition of premium cigar used by the NASEM expert committee is broader and would encompass a larger class of cigars than the definition adopted by Judge Amit P. Mehta, of the United States District Court for the District of Columbia, in a recent decision striking the latest attempt by the Food and Drug Administration to regulate premium cigars;

Whereas the narrower definition adopted by Judge Mehta is the definition that would apply if this resolution were enacted; and

Whereas the District Court concluded that the few health risks posed by premium cigars can be regulated at the State level: Now, therefore, be it

1        *Resolved by the Senate and House of Representatives*  
2        *of the United States of America in Congress assembled,*

1 **SECTION 1. EXEMPTION OF PREMIUM CIGARS FROM CER-**  
2 **TAIN TOBACCO REGULATION IN FEDERAL**  
3 **FOOD, DRUG, AND COSMETIC ACT.**

4 Section 201(rr) of the Federal Food, Drug, and Cos-  
5 metic Act (21 U.S.C. 321(rr)) is amended by adding at  
6 the end the following:

7 “(6)(A) The term ‘tobacco product’ does not mean  
8 a premium cigar.

9 “(B) In clause (A), the term ‘premium cigar’ means  
10 a cigar that—

11 “(i) is wrapped in whole tobacco leaf;

12 “(ii) contains a 100 percent leaf tobacco binder;

13 “(iii) contains at least 50 percent (of the filler  
14 by weight) long filler tobacco (whole tobacco leaves  
15 that run the length of the cigar);

16 “(iv) is handmade or hand rolled, meaning no  
17 machinery was used apart from simple tools, such as  
18 scissors to cut the tobacco prior to rolling;

19 “(v) has no filter, nontobacco tip, or nontobacco  
20 mouthpiece;

21 “(vi) does not have a characterizing flavor other  
22 than tobacco;

23 “(vii) contains only tobacco, water, and vege-  
24 table gum with no other ingredients or additives;  
25 and

- 1           “(viii) weighs more than 6 pounds per 1,000
- 2           units.”.

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