

CIGAR ASSOCIATION OF AMERICA,
et al.,

Plaintiffs,

v.

UNITED STATES FOOD AND DRUG
ADMINISTRATION, *et al.*,

Defendants.

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CORPORATE AND FINANCIAL DISCLOSURE STATEMENT

Amici curiae are non-profit organizations committed to advancing the public health. No party to this filing has a parent corporation, and no publicly held corporation owns 10% or more of the stock of any of the parties to this filing.

STATEMENT OF COUNSEL PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 29(a)(4)(E) AND LOCAL CIVIL RULE 7(o)(5)

Counsel for *amici curiae* hereby states that no counsel for any party to this litigation authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund, or did fund, the preparation or submission of this brief; and no person, other than *amici curiae*, contributed money that was intended to fund, or did fund, the preparation or submission of this brief.

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici American Academy of Pediatrics, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, Campaign for Tobacco-Free Kids and Truth Initiative are non-profit organizations that have worked for decades to protect the public from the devastating harms caused by tobacco products, the leading cause of preventable death in the United States, claiming over 490,000 lives every year. The organizations share a strong interest in ensuring that all persons are sufficiently protected from the adverse short and long-term public health effects of tobacco products, including so-called “premium cigars.”¹ *Amici* have filed seven previous briefs in this litigation, both in this Court and the Court of Appeals.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court of Appeals affirmed this Court’s vacatur of the Deeming Rule as it applies to premium cigars and remanded to permit briefing on the definition of “premium cigar” to be used in the Court’s final vacatur order. *See generally Cigar Ass’n of Am. v. United States Food & Drug Admin.*, 132 F.4th 535 (D.C. Cir. 2025). The definition of “premium cigar” that this Court adopts “will determine which products are exempted from the Tobacco Control Act.” *Id.* at 535. The breadth of that exemption will determine whether the Food and Drug Administration (FDA) may, *inter alia*, enforce age restrictions to prevent youth from being sold certain cigars, *see* 21 U.S.C. § 387f(d)(5), ensure that a cigar’s labeling not be false or misleading, *see id.* § 387c(a),

¹ In their rulemaking comments on the proposed Deeming Rule, *amici* supported extending FDA authority over tobacco products to include premium cigars. In affirming this Court’s decision vacating the Deeming Rule’s application to premium cigars, the D.C. Circuit observed that FDA “may seek to regulate these products once again . . .” *Cigar Ass’n of Am. v. United States Food & Drug Admin.*, 132 F.4th 535, 543 (D.C. Cir. 2025). *Amici* believe FDA should, once again, seek to regulate premium cigars through rulemaking.

require a reduction of a cigar's hazardous constituents, *see* § 387g(a)(4), or prescribe that cigars are manufactured, packed, and stored in accordance with current good manufacturing processes, *see id.* § 387f(e). Given the undeniable fact that smoking premium cigars exposes the user to all the same toxic substances in other cigars, *see generally Cigar Ass'n of Am.*, 132 F.4th at 539 (*quoting* Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on Sale and Distribution of Tobacco Products and Required Statements for Tobacco Products, 79 Fed. Reg. 23,142, 23,150 (Apr. 25, 2014)), this Court's order has significant potential to affect the public health.

In its original decision, the Court appropriately declined to craft a definition of “premium cigar” out of whole cloth, instead utilizing FDA's expertise in regulating tobacco products to arrive at its remedial definition. *See* ECF No. 276 at 12 n. 7; *Cigar Ass'n of Am.*, 132 F.4th at 542. However, this Court adopted a definition that FDA intended to use only for exercising its own enforcement discretion, not for comprehensively defining the “premium cigar” category for the purpose of determining the scope of the Deeming Rule with respect to cigars, and that definition lacked a key criterion: a price minimum. There is a more suitable, ready-made definition that the Court should now adopt: the definition FDA proposed in “Option 2” of the proposed Deeming Rule extending FDA regulatory authority over cigars.

ARGUMENT

The Court Should Adopt FDA's "Option 2" Definition of "Premium Cigar"

In making final the Deeming Rule, FDA opted to regulate broadly by selecting "Option 1," which deemed all "tobacco products,"² excluding product accessories, to be subject to the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). *See* Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81 Fed. Reg. 28,974 (May 10, 2016). The agency did so after concluding that regulation of "all cigars, rather than a subset" would "more effectively protect[] the public health." *Id.* at 28,976. FDA had considered an alternative. FDA's "Option 2" proposal would have excluded premium cigars by defining a "covered cigar" to mean "any cigar as defined in this part,"³ except one that:

(1) Is wrapped in whole tobacco leaf; (2) contains a 100 percent leaf tobacco binder; (3) contains primarily long filler tobacco; (4) is made by combining manually the wrapper, filler, and binder; (5) has no filter, tip, or non-tobacco mouthpiece and is capped by hand; (6) has a retail price (after any discounts or coupons) of no less than \$10 per cigar (adjusted, as necessary, every 2 years, effective July 1st, to account for any increases in the price of tobacco products since the last price adjustment); (7) does not have a characterizing flavor other than tobacco; and (8) weighs more than 6 pounds per 1000 units.

79 Fed. Reg. at 23,150.

² A "tobacco product" means "any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product [thereof]," subject to some limitations. 21 U.S.C. § 321(rr).

³ A "cigar" is a "tobacco product that: (1) Is not a cigarette and (2) is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco." 79 Fed. Reg. at 23,150 (*citing* 26 U.S.C. § 5702(a)).

In its final order, this Court should adopt this definition. First, because the “Option 2” definition was proposed through a public and transparent process, selecting it is consistent with the recognized value of public participation in governmental decision-making. It also best approximates the definition FDA would have selected had it elected regulatory “Option 2.” Second, it more accurately defines the premium cigar category and better serves the Tobacco Control Act’s manifest purpose of protecting public health than the definition proposed by plaintiff Cigar Association of America. The “Option 2” definition includes key provisions—a price minimum and a flavor restriction—to better ensure that youth are protected from the health hazards of smoking.

I. Adopting This Definition Promotes Transparency and Is the Best Approximation of the Definition the Agency Would Have Selected

This Court should, as it already has, utilize the FDA’s expertise in crafting its remedy. The Court’s August 9, 2025 order, however, adopted a definition FDA proposed to use merely in non-binding “guidance” intended to “help the FDA appropriately focus its enforcement efforts.” Case No. 8:18-cv-00883-PWG, ECF No. 188 at 2. The only definition that the FDA has considered to completely exempt particular cigars from any FDA regulation is the one it set forth as “Option 2.” This Court should adopt that definition, which, although never finalized, was proposed through a public and transparent process. Selecting it therefore serves “the values of government transparency and public participation” that the Administrative Procedure Act (APA) was designed to promote. *See Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 873 (8th Cir. 2013), *enforced sub nom. Iowa League of Cities v. E.P.A.*, No. 11-3412, 2021 WL 6102534 (8th Cir. Dec. 22, 2021); *see also Humane Soc’y of the United States v. United States Dep’t of Agric.*, 41 F.4th 564, 568 (D.C. Cir. 2022) (the APA is intended “[t]o foster public participation and facilitate reasoned decisionmaking”).

Moreover, it is the best approximation of a definition that FDA would have selected in this rulemaking, had FDA elected “Option 2.” Indeed, principles of administrative law require that a final rule be the “logical outgrowth” of a proposed rule to avoid additional rounds of notice-and-comment. *See, e.g., Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1107 (D.C. Cir. 2014). “In practice, the logical outgrowth doctrine creates a strong incentive for agencies to publish proposed rules in their expected final forms.” *The Vermont Yankee Principle Limiting Judicial Control of Agency Procedures*, 32 Fed. Prac. & Proc. Judicial Review § 8165 (2d ed.). So even though FDA never had an opportunity to “settle on a definition in the Final Deeming Rule” due to its decision to broadly regulate tobacco products, *Cigar Ass’n of Am.*, 480 F. Supp. 3d at 280, the agency had a strong incentive to propose it in its “expected final form”—incentive that was entirely lacking from the FDA’s enforcement-discretion definition. In other words, “Option 2” reflects the actual subset of cigar products that the agency reasonably thought might warrant a regulatory carve-out—and no more. This is of particular significance here, as the Court’s task on remand, assigning a “definition of ‘premium cigar,’” is “precisely the issue this rulemaking sought to determine.” *Cigar Ass’n of Am.*, 132 F.4th at 543.

The third alternative—deference to one of the tobacco industry’s preferred definitions—would permit an industry that sells “inherently dangerous” products, *see* Tobacco Control Act § 2(2), to determine the extent to which it is regulated. Moreover, as the cigar industry cannot itself agree on a preferred definition, it would also require the Court to adjudicate an internal industry dispute. Cigar Association of America proposes a definition favorable to *its* own members. *Compare* ECF No. 286 at 5 (acknowledging that there is no agreed-upon definition shared “by FDA, industry, courts, and the public”) *with* ECF No. 286 at 4 (insisting this court

craft a definition that is “recognized by industry and adult consumers”).⁴ Cigar Association of America would like to see no price minimum and the removal of three criteria from this Court’s 2020 order, including the restriction on characterizing flavors. *See* ECF No. 286 at 9-19. At the same time, Premium Cigar Association and Cigar Rights of America *support* the definition in this Court’s 2020 order, which of course, *had* a restriction on characterizing flavor.⁵ The absence of even industry agreement is further reason to adopt the FDA’s “Option 2” definition.

II. This Definition Includes Requirements Essential to Properly Define the Category of Premium Cigars and to Further the Statutory Purpose of Reducing Smoking

The FDA’s “Option 2” definition reflects the Tobacco Control Act’s “consistent concern for reducing smoking.” *Cigar Ass’n of Am. v. United States Food & Drug Admin.*, 964 F.3d 56, 62 (D.C. Cir. 2020). In the Tobacco Control Act, Congress recognized a scientific consensus that tobacco products “cause cancer, heart disease, and other serious adverse health effects,” and that the “only known safe alternative to smoking is cessation.” Tobacco Control Act § 2(2), 2(34).

In this rulemaking, one of FDA’s foremost concerns was that an improper definition of premium cigars “might sweep other cigar products under its umbrella.” 79 Fed. Reg. at 23,150. FDA was only considering a carve-out for cigars for which, “because of how they are used, may have less of a public health impact than other types of cigars.” *Id.* Hence, in their formal

⁴ At bottom, Cigar Association of America’s arguments lack persuasive value. Its proffered evidence of “what a premium cigar is,” ECF No. 286 at 9, boils down to a single self-serving declaration that is both conclusory and circular. *See, e.g.*, ECF No. 287 at 2 (Hidalgo Decl. ¶ 7) (“All premium cigars use very small amounts of adhesive in their construction.”); Hidalgo Decl. ¶ 12 (“Premium cigars use natural tobacco leaves in the filler.”).

⁵ ECF No. 294; *see also Court Blocks FDA Product Approval Requirements for Premium Cigars*, Premium Cigar Association (Aug. 19, 2024), <https://premiumcigars.org/court-blocks-fda-product-approval-requirements-for-premium-cigars/> (stating that the Court’s initial definition “is endorsed by Premium Cigar Association...”); *Why Congress Needs to Pass the Cigar Act*, Cigar Rights of America (Apr. 2, 2025), <https://cigarrights.org/why-congress-needs-to-pass-the-cigar-act/> (endorsing proposed federal legislation that would exempt from FDA regulation products satisfying this Court’s initial definition of “premium cigars”).

comments on the proposed Deeming Rule, all *amici* urged FDA that, if it chose to regulate in this manner, it should—as it had proposed—include a price minimum and a restriction on characterizing flavor.⁶ These criteria are necessary both to reflect FDA’s intention and to minimize the risk that the tobacco industry would be able to modify their products to circumvent regulation to the detriment of public health. Moreover, each are common-sense and supported by the data.

a. Price Minimum

The only definition of “premium cigars” that FDA has ever proposed to the public for these purposes—a complete exemption from regulation as a “tobacco product”—requires “a retail price (after any discounts or coupons) of no less than \$10 per cigar (adjusted, as necessary, every 2 years, effective July 1st, to account for any increases in the price of tobacco products since the last price adjustment).” 79 Fed. Reg. at 23,150. This provision reflects the reality that premium cigars tend to be more expensive. In the National Academies of Sciences, Engineering, and Medicine (NASEM) report on premium cigars commissioned by FDA, the committee acknowledged that “marketing experts define ‘premium’ products as those that cost more...”⁷ In comments that Cigar International, Inc. and other cigar interests filed with FDA, they stated that “premium cigars ... often sell for \$10 or more.”⁸ Consistent with this, data from the 2021 Population Assessment of Tobacco and Health (PATH) Study showed that premium cigar

⁶ Campaign for Tobacco-Free Kids et al., Rulemaking Comments on the Proposed Deeming Rule, at 16-17 (Aug. 8, 2014), https://assets.tobaccofreekids.org/content/what_we_do/federal_issues/fda/regulatory/2014_08_08-FDA-Comments-re-Deeming-with-Partners.pdf.

⁷ National Academies of Sciences, Engineering, and Medicine (NASEM), *Premium Cigars: Patterns of Use, Marketing, and Health Effects* 37 (2022), <https://doi.org/10.17226/26421>.

⁸ Rulemaking comments of Cigars Int’l, Inc. et al., Docket No. FDA-2011-N-0467, January 19, 2012, at 3.

smokers were less likely compared to other cigar smokers to report using premium cigars because they are affordable⁹ – in other words, existing premium cigar users generally acknowledge and accept higher prices for these products.

Amici considered this minimum price criterion “[p]erhaps of greatest importance” because it is “subject to the lowest risk of industry manipulation and evasion.”¹⁰ Because many of the other criteria in the various premium cigar definitions can overlap with non-premium cigar features, a high minimum price will create a definitive distinction between the categories. For instance, Game Leaf cigars have been described as “natural rolled-leaf” cigars on the packaging, which its manufacturer, Swedish Match North America, explained “is where both the internal and external components are rolled together by hand.”¹¹ The outer leaf looks like a cut whole tobacco leaf and the cigars weigh more than the requisite 6 pounds per 1,000 units. Yet the suggested retail price was 2 cigars for 99 cents, a price that is likely to attract the interest of young people.¹² Game Leaf is not an outlier. On July 8, 2025, counsel for *amici* received an unsolicited advertisement by mail for a selection of eight “first-class premium cigars,” including “Chillin’ Moose,” for “only \$10.” See Ex. A. Setting a high minimum price in the definition

⁹ Edwards, K. C., et al., Patterns of Premium and Nonpremium Cigar Use in the United States: Findings from Wave 6 (2021) of the Population Assessment of Tobacco and Health Study 25, *Nicotine & Tobacco Research* (Suppl_1), S5–S15. <https://doi.org/10.1093/ntr/ntad010>.

¹⁰ Campaign for Tobacco-Free Kids et al., Rulemaking Comments on the Proposed Deeming Rule, at 17 (Aug. 8, 2014). Indeed, Cigar Association of America outright states that the precise parameters of the selected definition will “force” manufacturers to “change” their products. See ECF No. 286 at 10.

¹¹ A. Abcede, *Natural, Rolled-Leaf Cigars Leading Category Growth*, CSP Daily News (May 11, 2018), <https://www.cspdailynews.com/tobacco/natural-rolled-leaf-cigars-leading-category-growth>.

¹² Game Leaf Cigars, Convenience Store News (February 4, 2015), <https://csnews.com/game-leaf-cigars>.

would properly prevent a products like Game Leaf and Chillin' Moose from qualifying as premium cigars that are exempt from federal age restrictions.

A minimum price criterion reflects Congress' recognition that young people "tend to be more price sensitive than adults." Tobacco Control Act § 2(24). It is also supported by the data, which demonstrate that teens—despite that group's overall price sensitivities—still use these products. A report by the HHS Office of Inspector General found that 20 teens out of 167 participants sampled reported spending more than \$10 (in 1999 dollars) for a cigar.¹³ One of those teens had spent \$55 on a single cigar.¹⁴ National Survey on Drug Use and Health data show that youth cigar smokers aged 12-17 named premium cigar brands—some of which can sell for more than \$10 per cigar—as products they smoked in the previous 30 days.¹⁵ Cigar Association of America's bold assertion that youth usage of premium cigars is "nonexistent," *see* ECF No. 286 at 15, is simply false. Particularly given that the court's order vacating the Deeming Rule as to premium cigars nullifies any federal age limitations on the sale of these products, the protection of young people from the hazards of cigar smoking demands that the Court include this price minimum in its definition of the category of unregulated cigars.

Defendants' objections to altering the definition of "premium cigars" currently used by FDA for various purposes primarily concern the "practical problems" resulting from now broadening the premium cigar category to encompass *more* products, as would occur under the CAA definition. *See* ECF No. 293 at 5-7. For FDA premarket review of marketing applications, for instance, this would mean that many denials of marketing authorization for cigar products

¹³ U.S. DEP'T OF HEALTH & HUMAN SERVS., Office of Inspector Gen., Youth Use of Cigars: Patterns of Use and Perceptions of Risk, (Feb 1999), at 8, <http://oig.hhs.gov/oei/reports/oei-06-98-00030.pdf>.

¹⁴ *Id.*

¹⁵ SAMHSA, *Analysis of 2012 National Survey on Drug Use and Health Data* (2012).

would be vulnerable to reconsideration and reversal on the ground that the products are “premium cigars” that should not have been subject to premarket review at all. *Id.* at 6. In contrast, *narrowing* the premium cigar category (such as by requiring a price minimum) would not undermine marketing denials already made; indeed, it would mean that some cigar products have avoided premarket review entirely because they were incorrectly classified as premiums. This has obvious public health implications which, given the Tobacco Control Act’s purpose, should receive greater weight than practical complications and additional burdens imposed on FDA by having to adjust to a different definition than it has used for the past several years.

As contemplated by FDA, the price minimum should be adjusted to reflect price changes in tobacco products since the proposal date (April 2014). The Court should take judicial notice of the Consumer Price Index for All Urban Consumers: Tobacco and Smoking Products in U.S. City Average, which has increased from 900.247 in April 2014 to 1,630.128 in May 2025, an increase of 81.08%.¹⁶ *See Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 648 (7th Cir. 2011) (“CPI belongs to the category of public records of which a court may take judicial notice.”). Accordingly, \$10 of tobacco products in April 2014 would cost \$18.11 in May 2025 dollars. The Court should order that FDA establish its initial minimum at \$18.11 and recalculate the new minimum in May 2027 and every 2 years thereafter (absent further rulemaking).

¹⁶ BUREAU OF LAB. STAT., *Consumer Price Index for All Urban Consumers: Tobacco and Smoking Products in U.S. City Average*, <https://fred.stlouisfed.org/series/CUSR0000SEGA> (last updated June 11, 2025) (Hosted by FED. RSRV. BANK OF ST. LOUIS). Data for May 2025 was the most recent data available when calculated.

b. Exclusively Tobacco Flavored

FDA has never considered a definition of “premium cigars” for regulatory purposes—or otherwise—that permits “a characterizing flavor other than tobacco.” 79 Fed. Reg. at 23,150. This is for good reason. FDA has extensively reviewed available research on the role of flavors in cigars and concluded that “the addition of characterizing flavors to tobacco products, including cigars, increases product appeal and makes tobacco products easier to use, particularly among youth.”¹⁷ The majority of youth who have ever smoked cigars started with a flavored cigar.¹⁸ And nearly three quarters of youth who smoke cigars said they did so “because they come in flavors I like.”¹⁹ FDA has therefore sensibly concluded “that characterizing flavors in cigars are associated with increased likelihood of youth and young adult experimentation, as well as progression to more regular patterns of use.”²⁰ Indeed, “[a]ccording to tobacco manufacturer documents, manufacturers have historically added characterizing flavors to tobacco products to make them more appealing to new users.”²¹ Cigar publications have even recognized that “flavored cigars serve as a bridge to premium cigars for the uninitiated”—“an entryway into the world of cigar smoking.”²²

¹⁷ U.S. FOOD AND DRUG ADMIN., *Scientific Assessment of the Impact of Flavors in Cigar Products* 20 (Mar 2022).

<https://web.archive.org/web/20241223141121/https://www.fda.gov/media/157595/download>.

¹⁸ *Id.* at 6.

¹⁹ Bridget K. Ambrose et al. *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014* 314 JAMA 1871-1873 (2015),

<https://jamanetwork.com/journals/jama/fullarticle/2464690/>.

²⁰ U.S. FOOD & DRUG ADMIN., *Scientific Assessment of the Impact of Flavors in Cigar Products* 28 (Mar 2022).

<https://web.archive.org/web/20241223141121/https://www.fda.gov/media/157595/download>.

²¹ *Id.* at 20.

²² David Savona, “Cigars of a Different Flavor,” *Cigar Aficionado*, Jul./Aug. 2005, <https://www.cigaraficionado.com/article/cigars-of-a-different-flavor-8595>.

Compared to those who smoke other types of cigars, fewer premium cigar smokers report that their regular brand is flavored or endorse flavors as the reason for using cigars.²³ A definition that excludes flavored cigars from this regulatory carve-out is common-sense and data-supported. It is notable that Premium Cigar Association and Cigar Rights of America both support a definition that includes such a criterion.²⁴

Standing alone, Cigar Association of America argues that it will be “impossible” for FDA to delineate cigars that have a characterizing flavor from cigars that do not. ECF No. 286 at 13. But the Tobacco Control Act already requires FDA to delineate cigarettes that have certain “characterizing flavor[s]” from cigarettes that do not. *See* 21 U.S.C. § 387g(a)(1)(A). Cigar Association of America offers no reason why FDA can seemingly comply with this mandate for cigarettes but could not for cigars. Moreover, its argument for including cigars with “characterizing flavors” rests on highlighting a few cigar advertisements that use creative descriptors. *See* ECF No. 286 at 14-15. It ignores the many flavored high-end cigars that are “directly flavored with syrups, liquors and food products,” being “steeped, soaked or infused with vanilla, rum, honey and dozens of other flavors.”²⁵ These include products that have clear appeal to youth, such as Java Mint by Drew Estate, currently advertised starting at \$8.49 per cigar, which customer reviews describe as “like girl scout cookies” and “mint chip ice cream.”²⁶ The premium cigar brand FLVR describes its “Ski Chalet” flavor as “a hand-rolled cigar bundled

²³ Kathryn C. Edwards et al., *Patterns of Premium and Nonpremium Cigar Use in the United States: Findings from Wave 6 (2021) of the Population Assessment of Tobacco and Health Study* 25, Nicotine & Tobacco Research (Suppl_1), S5–S15. <https://doi.org/10.1093/ntr/ntad010>.

²⁴ *See supra* fn.5.

²⁵ David Savona, “Cigars of a Different Flavor,” Cigar Aficionado, Jul./Aug. 2005, <https://www.cigaraficionado.com/article/cigars-of-a-different-flavor-8595>.

²⁶ Cigar.com: The Home for Cigar Enthusiasts; Java Mint by Drew Estate, <https://www.cigar.com/p/java-mint-by-drew-estate-cigars/1411403/>.

in salty caramel goodness. So put your goggles on, because you're about to get blasted with flavors of cinnamon, molasses and raisin.”²⁷ These products do not warrant special treatment. This Court's “premium cigar” definition should therefore exclude products with a “characterizing flavor other than tobacco.”

CONCLUSION

For the above-stated reasons, in its final vacatur order, this Court should adopt the “premium cigar” definition proposed by FDA as Deeming Rule “Option 2,” directing FDA to establish its initial price minimum as \$18.11, and to readjust that minimum in May 2027 and every two years thereafter, absent further rulemaking.

Respectfully submitted,

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²⁷ FLVR Cigars: Ski Chalet, <https://www.flvrcigars.com/products/ski-chalet/>.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2025, I have electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF system, which will send a notice of filing to all counsel of record.

/s/ Dennis A. Henigan
Dennis A. Henigan
Counsel for *Amici Curiae*

EXHIBIT A

Advertisement for a selection of eight "first-class premium cigars," for "only \$10"

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