



## Department of Public Health and Human Services

Office of Legal Affairs ♦ PO Box 4210, 111 N. Sanders ♦ Helena, MT 59604-4210

Telephone: 406-444-6902 Fax: 406-444-9744

Steve Bullock, Governor

Sheila Hogan, Director

July 16, 2020

Representative Sharon Stewart Peregoy, Chairperson  
Economic Affairs Interim Committee  
c/o Pat Murdo  
[pmurdo@mt.gov](mailto:pmurdo@mt.gov)

RE: EAIC's objection to DPHHS proposed flavored electronic smoking device rules

Dear Chair Peregoy and Members of the Committee:

I am writing in response to the objection of the Economic Affairs Interim Committee (EAIC) to the Department's proposed rules concerning flavored electronic smoking devices (MAR Notice No. 37-923). The objection of EAIC was made pursuant to section 2-4-406, MCA. The statute authorizes the "appropriate administrative rule review committee" to object to a proposed rule if the committee believes the rule has not been proposed in substantial compliance with the Montana Administrative Procedure Act (MAPA). Under MAPA, the terms "administrative rule review committee" and "committee" are defined as the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2 of the Montana Code Annotated. Mont. Code Ann. § 2-4-102(1).

The EAIC's rule review jurisdiction is limited to rules proposed by the executive branch agencies specified under section 5-5-223, MCA, and does not include rules proposed by the Department of Public Health and Human Services (DPHHS). With respect to rules proposed by DPHHS, rule review jurisdiction is vested with the Children, Families, Health, and Human Services Interim Committee. Mont. Code Ann. § 5-5-225. During the June 30, 2020, hearing, the committee's legal counsel indicated EAIC lacked jurisdiction to object to the proposed rules and stated the objection was subject to being ruled out of order.

The Department appreciates EAIC's interest in the proposed rules. Given that EAIC is without jurisdiction to make the objection, the Department is continuing with the rulemaking process in accordance with the requirements of MAPA.

Sincerely,

  
Sheila Hogan, Director  
Montana DPHHS