



# Energy and Telecommunications Interim Committee

68th Montana Legislature

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JACELYN STERLING, Secretary

September 27, 2023

To: Energy and Telecommunications Interim Committee  
From: Jameson Walker, Staff Attorney  
Re: Administrative Rule Review, September 2023

The Energy and Telecommunications Interim Committee is required to review administrative rules promulgated by the Public Service Commission for compliance with the Montana Administrative Procedure Act (MAPA).

## PROPOSAL NOTICES

### Department of Public Service Regulation and Public Service Commission

#### **MAR Notice Number:** 38-3-250

Subject: Amendment and repeal of rules pertaining to deregulation of Class C motor carriers in Montana's Motor Carrier Act.

Summary: The department proposes to amend 38.3.201, 38.3.702, 38.3.705, 38.3.706, 38.3.707, 38.3.805, 38.3.2001, and 38.3.2101. Generally, the rule amendments remove references to Class C motor carriers. The department states that the rule notice implements Senate Bill 33 (Chapter 422, Laws of 2023) by removing references to Class C motor carriers. Additionally, the department proposes to repeal 38.3.1303. This rule exclusively governed Class C motor carriers. The department states that the rule is no longer necessary since Senate Bill 33 eliminated the Class C motor carrier classification and regulations.

Notes/Hearing: The department does not anticipate the need to hold a public hearing relating to the rule notice and is accepting public comment through October 10, 2023.

# CHRISTI JACOBSEN

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### Montana Administrative Register Notice 38-3-250

**No. 18**  
**09/22/2023**

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#### BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PROPOSED
<u>38.3.201, 38.3.702, 38.3.705, 38.3.706,</u> )	AMENDMENT AND
<u>38.3.707, 38.3.805, 38.3.2001, and</u> )	REPEAL
<u>38.3.2101</u> and the repeal of ARM )	
<u>38.3.1303</u> pertaining to deregulation of )	NO PUBLIC HEARING
Class C motor carriers in Montana's )	CONTEMPLATED
Motor Carrier Act )	

TO: All Concerned Persons

1. The Department of Public Service Regulation proposes to amend and repeal the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on October 10, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail [pschelp@mt.gov](mailto:pschelp@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

38.3.201 VEHICLE REGISTRATION FEE (1) Class A, ~~G~~, and D motor carriers must pay an annual per vehicle registration fee for which a registration receipt will be issued, a copy of which shall be carried in each vehicle at all times.

AUTH: 69-12-201, MCA

IMP: 69-12-106, 69-12-108, 69-12-201, 69-12-325, 69-12-326, 69-12-401, 69-12-407, 69-12-421, 69-12-423, 69-12-501, 69-12-503, 69-12-504, 69-12-611, 69-12-612, MCA

38.3.702 BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE (1) Every class A, ~~G~~, and D intrastate carrier must file with this commission evidence of complying with the minimum insurance requirements of this commission as applicable to bodily injury and property damage liability insurance.

(2) For the purposes of this subchapter, "bodily injury" shall include death.

(3) Every class E carrier must file with the commission evidence of compliance with the insurance requirements of 69-12-343, MCA.

AUTH: 69-12-201, MCA

IMP: 69-12-402, MCA

38.3.705 FORMS FOR CERTIFICATE OF INSURANCE (1) The following forms shall be utilized by the department and may be obtained from the commission:

contained in 69-12-611, MCA.

(2) The purpose of these leasing regulations is to ~~insure~~ ensure that the primary responsibility for the conduct of regulated motor carrier operations remain with the certificated motor carrier, and that members of the public using motor carrier services are clearly advised of the identity of the responsible carrier, and that the leasing of equipment by an authorized motor carrier from the owner thereof, is not a subterfuge for leasing the carrier's certificate or permit to the owner-lessor.

(3) The leasing of power equipment by a certificated carrier to a noncertificated carrier is prohibited.

AUTH: 69-12-201, 69-12-204, MCA

IMP: 69-12-611, MCA

### 38.3.2101 SALE OR TRANSFER OF CERTIFICATE OF AUTHORITY

(1) As authorized by 69-12-325, MCA, public service commission certificates may be sold or transferred. The application for sale or transfer shall be addressed to the commission, be sworn to, and contain the following information:

(a) the name and address of the owner and the number of the certificate, together with request that authority be granted such owner to sell or transfer all rights, title and interest under such certificate to the named vendee or purchaser;

(b) the name and main office address of the vendee or purchaser, that such vendee or purchaser is desirous of acquiring Certificate No. \_\_\_\_\_, that the operations to be conducted thereunder will be in accordance with the rules and regulations of the commission, and should the vendee or purchaser be a legal corporation, the officers of such corporation and their addresses;

(c) a list of equipment the vendee or purchaser intends to operate under such certificate, giving the state license number, year and name of the vehicle, the serial number, and seating capacity thereof; (In case the vehicles are to be used in transporting property, the maximum load to be carried must also be shown.)

(d) state that the vendee or purchaser will furnish before beginning operation, insurance, surety bond, or other approved security, covering all vehicles to be operated;

(e) if the vendee or purchaser desires to adopt the tariffs and time schedules, etc., of the vendor on file with the commission, it shall here so be stated and reference to each of such publications by number and effective date must be made; ~~(Does not apply to class C carriers.)~~

(f) in case the vendee or purchaser does not desire to adopt the tariffs, time schedules, etc., of the vendor, it shall be so stated;

(g) in case the vendee or purchaser consists of more than one person (not incorporated) operating as a co-partnership under a trade name, then this item shall state that a certified copy of such partnership agreement is attached;

(h) shall set out the date on which it is desired that such sale or transfer shall become effective; no sale or transfer being retroactive, or effective until approved by the commission;

(i) shall state that the original certificate is attached, but if the original certificate issued by this commission has been lost, a statement showing the facts shall be inserted under this item or a separate affidavit reciting the loss of the certificate and accompanying the application;

(j) shall set forth that the sale or transfer is not for purpose of hindering, delaying or defrauding creditors;

(k) shall be accompanied by the vendee or purchaser's current financial balance sheet setting forth the assets, liabilities, and equity of the transferee, if the purchaser is in motor carrier transportation business, then the vendee's or purchaser's current financial income statement setting forth operating revenues, operating expenses, and net operating income of the transferee if said transferee is presently in the motor carrier transportation business; and

(l) shall be signed by the owner and the purchaser and notarized.

(m) Forms for applications for sale or transfer are available on the commission's web site or upon request.

(2) It is required that full compliance and completion of sales and transfers be consummated within 30 days after the mailing of the notice of the commission's approval or suffer the revocation of such right to the certificate by the commission.

AUTH: 69-12-201, MCA

IMP: 69-12-325, MCA

/s/ LAURA VACHOWSKI

Laura Vachowski  
Rule Reviewer

/s/ JAMES BROWN

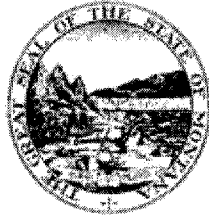
James Brown  
President  
Public Service Commission

Certified to the Secretary of State September 12, 2023.

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For questions regarding the content, interpretation, or application of a specific rule, please contact the agency that issued the rule.  
A directory of state agencies is available online at <http://www.mt.gov/gov/agencylisting.asp>.

For questions about the organization of the ARM or this web site, contact [sesarm@mt.gov](mailto:sesarm@mt.gov).



AN ACT ELIMINATING CLASS C MOTOR CARRIER CLASSIFICATION AND REGULATIONS OF A CLASS C MOTOR CARRIER BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTIONS 69-12-101, 69-12-201, 69-12-205, 69-12-301, 69-12-314, 69-12-321, 69-12-322, 69-12-323, 69-12-324, 69-12-404, 69-12-406, 69-12-407, 69-12-502, AND 69-12-611, MCA; REPEALING SECTIONS 69-12-302 AND 69-12-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 69-12-101, MCA, is amended to read:

**"69-12-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means a certificate of public convenience and necessity or a certificate of compliance issued under this chapter.

(3) "Certificate of compliance" means written authorization to operate issued by the commission for Class A or Class E motor carriers that transport passengers declaring that the motor carrier meets the fitness requirements of this chapter.

(4) "Certificate of public convenience and necessity" means a written authorization to operate issued by the commission for Class A motor carriers that transport property or persons and property, ~~Class C motor carriers~~, and Class D motor carriers declaring that the motor carrier service is required by the public convenience and necessity, as provided in this chapter.

(5) "Charter service" means a service used for the transportation of passengers by a motor carrier with rates not subject to approval by the commission if:

(a) the transportation of passengers is based on a single contract;

(12) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. A motor carrier includes a transportation network carrier.

(13) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(14) "Person" means an individual, firm, or partnership.

(15) "Personal vehicle" means a vehicle that is used by a transportation network carrier driver in connection with providing a prearranged ride and is:

(a) owned, leased, or otherwise authorized for use by the transportation network carrier driver; and

(b) not a taxicab, limousine, or for-hire vehicle.

(16) "Prearranged ride" means transportation provided by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network carrier, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxicab, limousine, or other for-hire vehicle pursuant to Title 69, chapter 12.

(17) "Public highway" means a public street, road, highway, or way in this state.

(18) "Railroad" means the movement of cars on rails, regardless of the motive power used.

(19) "Recyclable" means any material diverted from the solid waste stream that can be reused in the production of heat or energy or as raw material for new products and for which markets exist.

(20) "Transportation network carrier" means an entity that uses a digital network or software application service to connect passengers to transportation network carrier services provided by transportation network carrier drivers. A transportation network carrier may not be deemed to control, direct, or manage the personal vehicles or transportation network carrier drivers that connect to its digital network, except where agreed to by written contract.

(21) "Transportation network carrier driver" or "driver" means an individual who:

(a) receives connections to potential riders and related services from a transportation network carrier in exchange for payment of a fee to the transportation network carrier; and

defined in this chapter, and must be just, fair, and reasonable to the classes and types of motor carriers in relation to each other and to the public.

(2) (a) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of persons, the commission shall take into consideration the kind and character of service to be performed.

(b) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of property or persons and property, the commission shall take into consideration the public necessity of the service, the kind and character of service to be performed, and the effect of the tariff and rates on other transportation agencies, if any. The commission shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

(3) Except as provided in 69-12-341, a Class E motor carrier is not subject to commission rules related to schedules, tariffs, or rates."

**Section 4.** Section 69-12-301, MCA, is amended to read:

**"69-12-301. Classification of motor carriers.** (1) Motor carriers are divided into three ~~four~~ classes to be known as:

(a) Class A motor carriers;

~~(b) Class C motor carriers;~~

~~(c)~~(b) Class D motor carriers; and

~~(d)~~(c) Class E motor carriers.

(2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

~~(3) Class C motor carriers include all motor carriers where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.~~

~~(4)~~(3) Class D motor carriers include all motor carriers operating motor vehicles transporting garbage.

~~(5)~~(4) Class E motor carriers include all transportation network carriers."

**Section 5.** Section 69-12-314, MCA, is amended to read:

**"69-12-314. Class D motor carrier certificate of public convenience and necessity.** (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301~~(4)~~(3).

previous public investigation and finding and that public convenience and necessity now require the motor carrier operation."

**Section 7.** Section 69-12-322, MCA, is amended to read:

**"69-12-322. Notice of hearing.** (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall ~~cause~~ serve a copy of the petition and notice of hearing ~~to be served~~ upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of the certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of the hearing must be published:

~~(a) in the legal advertising section of a local newspaper or newspapers determined by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C authority; and~~

~~(b) in appropriate newspapers determined by the commission to have sufficient statewide circulation in the case of applications for Class A authority."~~

**Section 8.** Section 69-12-323, MCA, is amended to read:

**"69-12-323. Decision on application.** (1) (a) Except as provided in subsection (1)(b), within 180 days from the date of the completed filing of an application, the commission shall issue its finding, order, or decision on the application and the evidence presented in support of the application at the time of the hearing.

(b) The commission may extend the time for making a decision to a date requested by the applicant.

(2) (a) If after a hearing on the request for a certificate of public convenience and necessity the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part of the service proposed, a certificate of public convenience and necessity must be issued. In determining whether a certificate of public convenience and necessity should be issued, the commission shall consider:

(i) the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency;

(ii) the likelihood of the proposed service being permanent and continuous throughout 12 months of the year; and



(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department of the state.

~~(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued without a public hearing.~~

~~(3)~~(2) The certificate issued pursuant to the terms of the United States government or state government contract is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the motor carrier is the motor carrier authorized to operate under the United States government or state government contract."

**Section 10.** Section 69-12-404, MCA, is amended to read:

**"69-12-404. Suspension of certificate by petition.** (1) (a) A motor carrier may petition the commission in writing to suspend its certificate for a period not to exceed 6 months. Only one additional 6-month suspension may be requested and granted.

(b) The suspension of a certificate of public convenience and necessity requested by a motor carrier pursuant to 69-12-311(1)(b), ~~by a Class C motor carrier~~, or by a Class D motor carrier may be granted upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation.

(2) (a) The suspension of a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a) or for a Class E motor carrier as provided for in subsection (1) for a period of 12 consecutive months automatically terminates a certificate of compliance and requires a motor carrier pursuant to 69-12-311(1)(a) or a Class E motor carrier to reapply for a certificate of compliance.

(b) The suspension of a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b), ~~a Class C motor carrier~~, or a Class D motor carrier as provided in subsection (1) for a period of 12 consecutive months establishes a prima facie presumption of absence of public convenience and necessity. If after notice and hearing the motor carrier pursuant to 69-12-311(1)(b), ~~the Class C motor carrier~~, or the Class D motor carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission may cancel a certificate of public convenience and necessity."

includes but is not limited to the transportation network carrier driver's name, address, and social security number, other than the last four digits.

(5) Except as required by Article II, section 9 or 10, of the Montana constitution, the records obtained by the commission under subsection (4) may not be publicly disclosed by the commission."

**Section 13.** Section 69-12-502, MCA, is amended to read:

**"69-12-502. Prohibition on deviation from rate schedules.** It is unlawful for any Class A motor carrier to charge, demand, receive, or collect any greater or less rate, charge, or fare than that fixed by the commission for the transportation service provided. ~~When maximum or minimum rates have been established for any service provided by any Class C motor carrier, it shall likewise be unlawful for the carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate or any less compensation or rate than that established by any applicable minimum rate.~~ It shall also be unlawful for any Class A motor carrier ~~or any Class C motor carrier subject to maximum or minimum rates~~ to refund or remit, in any manner or by any device, any portion of the rates, fares, and charges required to be collected under the schedule of the Class A carrier on file with the commission ~~or under the maximum or minimum rates established by the commission for the Class C carrier.~~"

**Section 14.** Section 69-12-611, MCA, is amended to read:

**"69-12-611. Leasing of power equipment.** (1) All Class A; ~~Class C;~~ and Class D motor carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of power units must be in writing.

- (2) All leases must contain:
- (a) the full names and addresses of negotiating parties;
  - (b) a complete description of each vehicle involved;
  - (c) a provision that the sole possession, responsibility, control, and direction of each vehicle resides with the lessee for the entire term of the lease;
  - (d) a provision that the lessee assumes full responsibility for all regulatory fees;
  - (e) the amount of compensation to be paid for use of the vehicle while under the lease and the method by which the compensation is determined;
  - (f) the renewal conditions of the lease, if any; and
  - (g) the term length of the lease.

**Latest Version of SB 33 (SB0033.002)**

Processed for the Web on April 18, 2023 (2:34PM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

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Prepared by Montana Legislative Services  
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