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Water Carrier Statutes and Regulations – FMCSA Says "Goodbye" Through Regulatory Reforms

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Water carriers have a moment of clarity on the horizon. An area of conflict between legal jurisdiction and technical obligations is being settled through Trump Administration regulatory reforms. In May of 2025, the U.S. Department of Transportation's Federal Motor Carrier Safety Administration ("FMCSA") issued a Notice of Proposed Rulemaking ("NPRM") to eliminate requirements for "water carriers" that have become obsolete over the decades.

This change is part of an overall approach to regulatory reforms by the Trump Administration, the policy objective which was first announced by Executive Order shortly after Inauguration Day. The President seeks to "significantly reduce the private expenditures required to comply with Federal regulations to secure America's economic prosperity and national security and the highest possible quality of life." The strategy for achieving this objective is two-fold: (1) reducing the compliance cost on regulated businesses; and (2) simultaneously reducing the risk of non-compliance with "ever-expanding morass of complicated Federal regulation." The President also announced a Ten-to-One initiative in the Executive Order and a separate Fact Sheet that aims to "unleash prosperity through deregulation" by removing ten regulations for every new regulation that goes into effect. The regulatory compliance cost of this approach is intended to reduce incremental costs to less than zero.

The comment period on the FMCSA's NPRM ended on July 29, 2025. If finalized, it will signal low levels of regulation for the transportation mode due to the FMCSA's acknowledgment that it will not exercise jurisdiction.

The FMCSA had long held technical jurisdiction over certain water carrier activities, together with the Surface Transportation Board ("STB"). The statutory definition for "water carrier" found at 49 U.S.C. § 13102 refers simply to "a person providing water transportation for compensation," which includes traffic over the U.S. inland waterways or in the noncontiguous domestic trades. It did not refer to traffic in the international trades, which is subject to Federal Maritime Commission ("FMC") jurisdiction. In practice, the term "water carrier" includes barge operations, other brown water vessels, and blue water vessels that do not service foreign traffic.

Legacy statutes addressing water carriage resulted in interesting legal effects, despite the low level of regulation. As one example, third parties who arranged for water carriage were often technically required to hold "freight forwarder" registration with the FMCSA pursuant to 49 U.S.C. §§ 13102(8), 13901, and 13903. This effect resulted from the broad-sweeping definition of freight forwarder as one who provides for transportation, including by water carrier, through assembling, consolidating,

distributing, and assuming responsibility for cargoes. In contrast, the STB had no technical licensing or permit requirement for forwarders.

This scenario of water carriers remaining "on the books" under Title 49 without any meaningful regulation arose out of the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"). Water carriage along with other modes of transportation, including interstate motor carriage, were subject to tariff filing requirements and rate restrictions prior to the wave of deregulation that started in 1980. The passage of ICCTA eliminated the Interstate Commerce Commission and in part established the STB to regulate rates and services. Statutory references to water carriage remained without any meaningful regulatory activity in the subsequent 30 years, despite the FCMSA maintaining technical jurisdiction over the mode.

Today, the FMCSA's stated position is that it "does not specifically regulate water carriers except to the extent that such carriers also engage in motor carrier operations. In such cases, the existing FMCSRs provide appropriate coverage of the carrier's motor carrier operations." This is true to the name of the Administration (the "Motor Carrier Safety Administration") and thus amounts to an admission that the water carriage language is a historic hold-over without any contemporary purpose. The FMCSA does not and will not seek to assert oversight of those domestic water carrier operations. The last remaining agency with jurisdiction is the STB.

Although the STB has jurisdiction over domestic water carriers under Title 49, the agency narrowly construes its power and rarely exercises its authority in this regard. For example, the licensing and registration requirements under 49 U.S.C. § 13102 include water carriers and freight forwarders that operate in domestic inland waterways and the noncontiguous domestic trade of the U.S. (to or from Alaska, Hawaii, or the U.S. territories), but the STB does not impose these obligations or engage in related enforcement activities. In large part, the STB's regulatory posture for water carriage is reactive and event-driven to adjudicate the occasional tariff rate or charge dispute or service-related complaints that arises in noncontiguous domestic trade.

The passive posture of the STB stands in contrast to the active oversight and role exercised by the FMC as the sole regulator for the common carriage of goods by water in the foreign commerce of the U.S. 46 U.S.C. § 40101. Under the Shipping Act, the FMC regulates international ocean transportation that supports the U.S. economy and protects the public from unfair and deceptive practices by enforcing licensing, registration, and bond requirements, monitoring the compliance of ocean practices and services, as well as filing requirements for tariffs, rates, charges, and service contracts, and the agency administers an adjudicatory system with Administrative Law Judges versed in admiralty and maritime law, the Shipping Act, and related regulations. FMC jurisdiction excludes domestic water carriage. Such services operating under the Jones Act and other purely-domestic trades fall outside the scope of the Shipping Act and FMC jurisdiction, which emphasizes the regulatory gap between the domestic and foreign waterborne commerce of the U.S.

Although the FMCSA confirmed in its NPRM that it would no longer interpret its statutory jurisdiction to reach domestic water carriers or their intermediaries, the underlying statutory provisions have not been repealed. Indeed, the definitions of "carrier" and "freight forwarder" under 49 U.S.C. § 13102, and their corresponding registration requirements under 49 U.S.C. §§ 13901 and 13903 remain intact. Despite the fact the FMCSA disclaims its regulatory authority over water carriers that are not engaged in motor carrier operations, the underlying statutory framework for water carriage remains.

Accordingly, while the agency's position represents meaningful progress in regulatory clarification and deregulation, it does not amount to a statutory repeal or removal.

For industry participants, the net practical effect is substantial in that the FMCSA's retreat eliminates longstanding ambiguity about registration requirements for carriers, freight forwarders, and brokers in the domestic water context. With the STB maintaining its passive posture and the FMC well outside the domestic domain, regulatory obligations for domestic water carriage have been reduced to near-zero. Service providers performing in the inland and noncontiguous trades can now operate with greater legal certainty and reduced compliance friction - free to focus on service delivery and market competitiveness rather than navigating legacy enforcement risks. The statutes may remain on the books, but the regulatory environment will align with commercial reality.