CLIENT ALERTS & INSIGHTS

Delivery Network Carrier Models and the Evolution of Last-Mile Residential Delivery

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Last-mile transportation operations are continuing to grow despite the revocation of de minimis customs treatment. E-commerce retail and the demand for swift dependable deliveries are here to stay. In short, last-mile transportation services are now a central component of the supply chain. As last-mile business models mature, challenges remain around lawful operating models and the approach taken by regulators for service providers and their drivers. One relatively new development in this regulatory landscape is the emergence of "delivery network carrier" (DNC) models. This article addresses those key questions and the impact of DNC models.

Nature of Commerce: The threshold legal issue in all last-mile transportation operating models is the nature of the commerce involved. Many last-mile drivers operate solely within a single state, but still engage in ***interstate*** commerce as defined by federal law. Courts clarify that the nature of commerce depends not on whether vehicles physically cross state lines, but on the broader shipping context and intent of the shipment. For instance, if goods originate or terminate outside the driver's state, or transit another state, then the driver's activities-even if intrastate geographically-are governed by interstate commerce rules. This distinction is crucial for applying the proper federal or state regulatory regime.

Applicable Regulations: Last-mile service providers and their drivers remain subject to a complex overlay of both state and federal law. The Federal Motor Carrier Safety Administration's (FMCSA's) regulations-such as those governing driver safety, vehicle standards and operational compliance-apply broadly to interstate commerce carriers regardless of the carrier's scale or delivery geography. States retain authority over purely intrastate commerce, often regulating carriers via public utilities commissions or similar bodies. This regulatory duality creates challenges, especially as carrier business models diversify to include independent contractors and use of drivers' personal vehicles.

Equipment Considerations: The equipment deployed today by last-mile operations can vary widely in type and weight. Importantly, FMCSA requirements for interstate operating authority are not contingent on the weight of vehicle used. The federal compliance obligations that become contingent are in large part dependent on whether a commercial motor vehicle (CMV) is involved. CMVs may include seemingly light vehicles that break the 10,001 Gross Vehicle Weight Rating threshold, such as heavy sprinter vans or pickup trucks towing trailers. These vehicles trigger application of most Federal Motor Carrier Safety Regulations (FMCSRs) despite the absence of CDL requirements. A common misconception in this space is that use of passenger vehicles eliminates

safety compliance. Even if a movement is in intrastate commerce, certain states, such as Illinois and Pennsylvania, take interest in regulating those for-hire services while others, including Colorado and Georgia, do not.

Federal Leasing Regulations: There is always a "carrier" if a model involves delivering goods of others for compensation. This is a fact that many do not want to believe. The carrier may be the delivery platform itself or it could be the fleet, or individual driver, actually operating the vehicles. If the delivery platform is not a carrier, then other obligations may be in play, such as the necessity of a broker permit. Where there is distance between the party selling the services and the party actually performing services, one approach to closing this gap is the use of the historic Federal Leasing Regulations at 49 CFR Part 376 (FLRs).

If a delivery model involves use of a carrier that engages third parties using their own equipment, then building out FLR compliance may be appropriate. The FLRs govern the leasing arrangements between motor carriers and vehicle owners, including rental agreements and other contracts where carriers engage drivers' personal vehicles under the motor carriers' operating authority. In addition, the FLRs are broadly construed and apply to drivers using their personal vehicles, even when these vehicles have a gross vehicle weight rating of less than 10,000 pounds. Compliance with the FLRs ensures clear contractual terms, safety responsibilities and regulatory obligations, affecting last-mile carriers who rely on leased or owner-operator vehicles. Accordingly, last-mile motor carriers engaging drivers in personal vehicles to operate under their authority must adhere to the FLRs.

The Delivery Network Carrier: Many new entrants into the last-mile residential delivery space believe they are operating in unregulated fashion and refer to the Transportation Network Companies as an example. The fact of the matter is that TNCs are indeed regulated, and their existence under state law refers to transportation of passengers rather than cargoes. In California, recent regulatory developments have introduced the concept of the "delivery network carrier" or "DNC," which establishes a distinct legal framework for entities providing on-demand delivery services through app-based platforms.

California law defines DNCs as businesses that operate online-enabled applications or platforms to facilitate delivery services on an on-demand basis. DNCs provide a platform where "delivery network couriers," or the individuals performing delivery services, have the option to accept or decline each delivery request, and the company does not mandate acceptance of specific delivery tasks as a condition for maintaining access to its platform. The DNC model addresses the rapidly evolving on-demand gig economy and creates separation from traditional transportation or last-mile delivery services.

The Road Ahead: New and creative delivery models are available for competitive advantage, but the legal and regulatory framework in which these models operate does exist, and it is important. Change is also possible as models emerge and consumer demands shift. Meanwhile, policymakers continue to grapple with safety, liability and employer considerations, as demonstrated by California's new DNC concept. As traditional legal frameworks struggle to keep up with the pace of deliveries, service providers may face confusion in navigating the applicable regulatory framework. Benesch's Transportation and Logistics team has built many last-mile models, service terms and compliance strategies alongside essential forward-looking strategic advice. We are always available to assist those entering or growing operations in this exciting space.

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