CLIENT ALERTS & INSIGHTS

Final-Mile Delivery and Nature of Commerce - The Most Important Legal Question Providers Struggle to Answer

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The growth of final-mile package deliveries, especially to residential delivery following the global pandemic, raises important legal questions about the transportation service performed by delivery drivers and their companies. A final-mile carrier is a specialized transportation company offering delivery services from a local hub, warehouse, or fulfillment center directly to a customer's designated destination, typically their home or business. Many final-mile carriers misunderstand whether they are engaged in intrastate or interstate commerce when their vehicles do not cross state lines.

Understanding nature of commerce is fundamental to determining whether federal or state law and regulation apply. Failure to correctly determine nature of commerce can lead to regulatory enforcement such as civil penalties and injunctions, litigation risk as evidence of negligence, and reputational harm for customers as well as personnel. Accordingly, this article examines the distinction between intrastate and interstate commerce and why it is key to lawfully building final-mile carriage operations.

Interstate vs. Intrastate Commerce

The federal government has jurisdiction over foreign and interstate commerce as granted by the Commerce Clause of the U.S. Constitution. The federal government holds authority under the Commerce Clause to enact laws and create regulatory agencies, such as the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA), to regulate interstate transportation by motor carriers. Meanwhile, individual state governments hold jurisdiction over intrastate commerce in their respective states (between locations exclusively within that state) and may regulate intrastate commerce.

The FMCSA defines *interstate commerce* as: (i) between a place in a State and a place outside of such State (including a place outside of the United States); (ii) between two places in a State through another State or a place outside of the United States; or (iii) between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States. The FMCSA defines *intrastate commerce* as any trade, traffic, or transportation in any State which is not described in the term "interstate commerce." 49 C.F.R. § 390.5.

Whether transportation is considered interstate or intrastate does not depend on the physical route or the distance traveled, but rather, on the broader context of the transportation and the intent of the shipment. Courts do not just focus on the location where the transportation occurred when determining nature of commerce, but rather on the shipper's intent at the time of the shipment. For

instance, if a shipper intended to send a package from one state through another state to its final destination, then the movement would be considered *interstate* commerce. This would apply even if a final-mile carrier making the delivery to the customer only operated within the single state in which the package was delivered. Conversely, if the shipper intended the shipment to move only within a single state, the package will remain in intrastate commerce. Additional considerations when determining the nature of commerce include:

Continuity of Movement. Transportation within a single state is in interstate commerce within the meaning of the Fair Labor Standards Act where it forms a part of a "practical continuity of movement" across state lines from the point of origin to the point of destination.

Multiple Carriers or Modes. Accomplishing transportation using multiple carriers, types of equipment, or modes *does not* in and of itself bring the packages outside of interstate commerce. Today many e-commerce and retail operations involve middle mile movements across state lines in tractor trailers with the last-mile delivery accomplished in sprinter vans operating only within state lines. Here the nature of commerce would remain interstate.

Storage in Transit. Storage in transit, when packages are placed into temporary short-term storage at a warehouse or distribution center, *does not* bring the packages outside of interstate commerce. Storage in transit is considered a "temporary pause" in the transportation journey and not a final delivery or change in the nature of the shipment. If the packages are placed into long-term storage, however, they will likely be removed from the interstate stream of commerce.

Product Type. If a product is a raw material that is shipped from one point to another in a single state but is then used to produce a product that is shipped to the other state, the nature of commerce often depends on the degree of alteration of the raw material.

Final-Mile Implications

The nature of commerce determination, as interstate or intrastate, has significant impacts on a final-mile carrier's operations and the set of laws and rules by which they must comply. To illustrate this point, here are a few examples highlighting the need to comply with federal laws and requirements even when a final-mile delivery driver may not cross state lines:

1. A driver transports a package from an online retailer in Melbourne, Florida, to Denver, Colorado. In this case, the driver engages in **interstate** commerce because the driver physically crossed numerous states from Florida to Colorado.
2. A driver transports packages from a factory in Cleveland, Ohio, to a temporary storage facility in Cincinnati, Ohio. The next day another driver picks up the packages and drops them off to the customer in Covington, Kentucky. Because the intent of the shipper was to have the shipment cross state lines, the nature of the commerce for both legs of transportation is **interstate**.

3. A shipper in Mount Ephraim, New Jersey, wants to ship its goods to its customer in Asbury, New Jersey. The last-mile driver decides to cut through Pennsylvania to avoid an accident on the New Jersey side of the Delaware River. This is considered **intrastate** commerce because the shipper's intent was to ship its goods through the single state of New Jersey.

No single question is more important. Our business operations counsel on construing the roles of service providers, structuring driver relationships, drafting customer terms and liability provisions, and advising on the adequacy of insurance follows directly from these determinations. Our day-to-day compliance counsel and regulatory enforcement defense begins with these core principles at the heart of transportation law. Our representation during disputes follows directly from the body of law on which these determinations are based and the foundational business operations we built.

Conclusion

The classification of commerce as interstate or intrastate impacts every aspect of final-mile carrier operations. Misunderstanding this distinction can lead to significant compliance pitfalls, violation of federal laws and regulations, and increased litigation exposure. The starting point for avoiding those pitfalls is to consider shipper intent on the origin and ultimate destination of its packages, not just the immediate route, to determine the nature of commerce. By clearly understanding and adhering to the correct regulatory framework, final-mile carriers can operate efficiently, avoid costly compliance errors, and expand business opportunities by building on a well-reasoned operating structure.

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