



towardsjustice.org | 720-441-2236

303 E. 17th Street, Suite 400, Denver, CO 80203

1580 N Logan Street, Denver, CO, 80203-1994

TO: Division of Labor Standards & Statistics
FROM: Towards Justice
DATE: October 31, 2024
RE: Comments on Proposed Delivery Network Company and Transportation Network Company Acts (DATA) Labor Rules
VIA: Fall Rulemaking 2024 Google Form

Towards Justice is a nonprofit law firm that represents workers in litigation and other advocacy in an effort to build worker power and advance economic justice in our home state of Colorado and around the country. We participated in the coalition in support of the Transportation Network Company (TNC) and Delivery Network Company (DNC) Acts, which Governor Polis signed into law this year. We appreciate the work your office has done to draft regulations implementing these new laws and we thank you for the opportunity to comment.

1. Rule 2

We suggest clarifying that, as defined in the TNC Act, the time a driver spends on available platform time, dispatch platform time, and consumer platform time, together, adds up to all the time that a driver spends logged into a TNC's digital platform. That is, there is no other type of time when a driver could be active on a TNC's digital platform. In addition, this definitional clarification should indicate that consumer or rider pickup - as used in the definition of dispatch platform time - occurs when the consumer or rider enters the vehicle.

This section should also clarify the meaning of "engaged time" in C.R.S. § 8-4-126(3)(c)(II) and "actual time" in C.R.S. § 8-4-126(3)(d)(III) by indicating that drivers engaged on a per shift basis are engaged when they arrive at the warehouse or pick up location until they complete their last assigned delivery unless that last assigned delivery is completed at a location estimated to be more than 20 minutes away from the warehouse or pick up location. In such a case, the estimated time it would take the driver to drive from the last assigned delivery drop-off location back to the warehouse must be included in actual time or engaged time.

2. Rule 4.2.2 and Rule 4.3.6

We suggest ensuring that the complainant receives a copy of the answer and attached documentation or evidence that the respondent files with the Division pursuant to Rule 4.2.2. We also recommend ensuring that, if the Division exercises its discretion to terminate an investigation pursuant to Rule 4.3.6, the Division notifies the complainant.

3. Rule 4.3.7

This rule indicating that agency determinations regarding violations of the TNC or DNC Acts become final at some indeterminate time after “any further internal review” is unclear. The rule should be modified to state that determinations are final agency actions.

4. Rule 5.1.2

We suggest removing the second sentence of this rule entirely. We are concerned that the substance of important disclosures required in the DNC Act could be obscured if DNCs overwhelm drivers or consumers with information. To address that concern, we suggest limiting disclosures of the IRS mileage rate to the statutorily required disclosure. We also believe that allowing DNCs to provide “notice regarding the applicability of the IRS mileage rate” could be misleading to drivers.

5. Rule 5.2.2

We propose adding a subsection (D) to Rule 5.2.2 as proposed to ensure that the term “reward” includes any other incentive related to the terms or conditions of driver work or driver access to the DNC or to the DNC’s digital platform. This would capture situations where drivers are rewarded by offering increased access to DNC customer service or other non-monetary perks.

6. Rule 6.1.4

We suggest adding to subsection (B) of Rule 6.1.4 to clarify that each new driver may receive this disclosure before engaging in a transportation task *and* if/when deactivated or suspended pursuant to C.R.S. § 8-4-127(6)(b)(II)(B).

7. Rule 6.4

We suggest adding Rule 6.4 to clarify Division requirements for Driver Support Organization (DSO) reporting and ongoing compliance with DSO requirements in the TNC Act. To maintain such ongoing compliance with the requirements of the Act, this rule should specify that no TNC may dominate or interfere with the formation or administration of any DSO or contribute financial or other support to it as prohibited by Section 8(a)(2) of the National Labor Relations Act as interpreted by the National Labor Relations Board. Rule 6.4 should include the method and frequency of disclosures required pursuant to C.R.S. § 8-4-127(6)(a)(IX), as well as documentation demonstrating that DSO services remain consistent with C.R.S. § 8-4-127(6)(a)(II)(B).

8. Rule 6.5

We suggest adding Rule 6.5 to clarify that each TNC must allow the Division Access Point Interface (API) access to a database that the company hosts that includes all information that the TNC is required to provide to the Division pursuant to C.R.S. § 8-4-127(9) in machine-readable .csv format. The information must be searchable, manipulable, downloadable, and include documentation of what each variable disclosed means, including the variable name with definition, range, data type, and attributes.

Rule 6.5 should also describe the plan and timeline for the Director to determine and design a sampling methodology in accordance with C.R.S. § 8-4-127(9)(d)(I) and require that the

methodology be representative of different types of rides, vehicles, geography, and driver attributes (including gender and language preferences).

9. Rule 6.6

We suggest adding Rule 6.6 to clarify that when a TNC objects to disclosure pursuant to C.R.S. § 8-4-127(10), the Division will limit or deny the disclosure only if it is inconsistent with the Colorado Open Records Act (CORA) at C.R.S. § 24-72-101, et seq.

10. Rule 6.7

We suggest adding Rule 6.7 to clarify how DNCs ought to calculate estimated or actual time spent on a delivery task pursuant to C.R.S. § 8-4-126(3)(a)(V). This estimated or actual time begins when the driver accepts a delivery task and lasts until the driver drops off the goods with the consumer, including time spent waiting at a restaurant or other merchant to pick up goods. If the DNC provides drivers with estimated times, the DNC should regularly audit the accuracy of their estimation methodology and update to ensure the most accurate possible estimates.

11. Rule 7.2

We suggest adding Rule 7.2 to clarify the requirements for TNC and DNC provision of data to drivers. This rule should indicate that the information shared pursuant to C.R.S. § 8-4-127(11)(c), C.R.S. § 8-4-126(3)(b), (d), and (e) must be available in a human-readable form (e.g., PDF) and in a machine-readable format (.csv), and the TNC must offer drivers the ability to download a .csv file containing all required information for each task accepted over at least the previous year (or since the effective date of the relevant provision) by accessing a “download” button in their driver app. TNC’s must respond to all download requests within 48 hours. This rule should also ensure that each TNC and DNC allows drivers to elect to receive this data weekly, monthly, or quarterly rather than after each transportation task.