TO: **Division of Labor Standards & Statistics**

FROM: **Colorado Fiscal Institute**

DATE: **November 1, 2024**

RE: **Comments on Proposed Delivery Network Company and Transportation Network Company Acts (DATA) Labor Rules**

VIA: **CDLE_LaborStandardsRules@state.co.us**

The Colorado Fiscal Institute (CFI) is a statewide nonprofit organization that works to make Colorado a state where economic, tax, and fiscal policies promote equity and widespread economic prosperity.

CFI provided research to support the passage of the Transportation Network Company (TNC) and Delivery Network Company (DNC) Acts. We thank the Division for its work drafting the DNC and TNC Acts Labor Rules (DATA Labor Rules), 7 CCR 1103-19 to implement the new laws.

CFI submits the following comments on the proposed rules, and supports the comments from the Worker's Algorithm Observatory and Towards Justice. To ensure the laws promote public transparency as intended and that rideshare and delivery workers across Colorado have access to relevant employment related-data, CFI proposes the following clarifications and additions to the rules:

Rule 5.1.2
CFI is concerned that the substance of important disclosures required in the DNC Act could be obscured if DNCs overwhelm drivers or consumers with information. This could be addressed by limiting disclosures of the IRS mileage rate to the statutorily required disclosure and removing the second sentence, which could be confusing by allowing additional disclosures outside the statutes requirements. This data should also be accessible for drivers, and made available in machine readable format (csv) in addition to PDF. This is relevant for when drivers calculate their expenses for tax deductions; the division should add language to ensure drivers can more easily extract the data for accurate tax filing by requiring that the mileage data for (11)(e)(II) - (11)(e)(C) be made available in a .csv file.

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 a driver's work or access to the DNC's digital

platform. This data is critical to accurately reflect incentives like increased access to non-monetary benefits from the DNC.

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, and that this 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. This has been established as best practice by information technology and data governance experts as a fair standard to ensure that the data is accessible, accurate, and usable for all relevant stakeholders.

The rule also should clarify a plan and timeline for the Division Director to design a sampling methodology in accordance with C.R.S. § 8-4-127(9)(d)(I). The methodology should be reproducible and representative of different types of rides, vehicles, geographic regions (such as by grouping ZIP codes into urban, suburban, and rural zones based on population density from the most recent U.S. Census data), time of day, and driver attributes (including gender and language preferences).

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 if and when such disclosures would be inconsistent with the Colorado Open Records Act (CORA) at C.R.S. § 24-72-101, et seq.

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, and includes time spent waiting at a restaurant or other merchant in order to pick up the goods, if any. 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.

Rule 7.2

To achieve the data transparency goals of the TNC and DNC Acts, and ensure accessibility for impacted workers and the public, CFI's echo Towards Justice and Samantha Dalal's requests to add 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. 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.

The above approach is supported by recent policy briefs from leading economic policy think tanks[1] and proposals from data governance experts at Princeton's Center for Information Technology's (CITP) Workers Algorithm Observatory.[2] Industry experts have called for the critical role of of policymakers and regulatory bodies like DLSS in facilitating transparency in the firm-level use of data and technologies, by "requiring employers to disclose their use of electronic monitoring, surveillance, and automated decision-making systems, as well as employment related-data and decisions produced by such systems, in a manner that is ***actionable for workers and their representatives.***"[3]

Specifically, recent research on the rideshare sector from Princeton's CITP researchers has proven the critical need for rideshare drivers to access both "input (such as trip start and end points, and criteria for promotions) and output data (including platform commissions and customer fares) of automated decisions" such as the task data disclosures covered in (11)(d). The scholars analysis of over 1 million comments posted to online platform worker communities showed the "transparency gap" between existing platform designs and the information drivers need to improve their working conditions. The Division must add additional clarity to the rules through these proposed amendments to ensure comprehensive, accessible data is delivered to workers in a timely manner. To implement the TNC and DNC Acts as intended, drivers must be able to use this data to plan their work more accurately, and drivers not be burdened with a piecemeal approach to aggregating and analyzing per-trip data themselves.

The clarifications and additions above, particularly ensuring API access, are also a critical part of a broader trend the scholars have identified called ***"transparency washing"***[4] in which companies "sidestep regulation and enhance platform brand, all the while obscuring data and misdirecting public scrutiny."[5] To ensure data disclosures allow for a substantive understanding of what this data means for worker's job quality, regulatory bodies like DLSS are charged with applying a high standard of scrutiny to disclosure policies. DLSS must ensure the rules align with calls to "specify data granularity, aggregation methods, hosting responsibilities, release frequency, and formats" to prevent transparency washing.

References

1. Zipperer, B., Mokhiber, Z., Bivens, J., & Rhinehart, L. (2023). A worker-centered approach to policy in the era of AI. Economic Policy Institute.
https://www.epi.org/publication/a-worker-centered-approach-to-policy-in-the-era-of-ai/
2. Center for Information Technology Policy. (2024). Rideshare transparency: Policy and practice considerations [Memorandum].
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3. See 1
4. Zalnieriute, M. (2021). "Transparency-washing" in the digital age: A corporate agenda of procedural fetishism. Critical Analysis of Law, 8(1), 39–53. UNSW Law Research Paper No. 21-33. Available at SSRN:
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5. See 2