

Oct. 31, 2024

Colorado Department of Labor and Employment
Division of Labor Standards and Statistics
Attn: Scott Moss, Director
633 17th Street, Suite 201
Denver, CO 80202-3660

RE: CDLE Proposed Rulemaking – 7 CCR 1103-19

Dear Director Moss:

Walmart Inc. (Walmart) respectfully submits the following comments in response to the Colorado Department of Labor and Employment's (CDLE) proposed rulemaking to implement House Bill 24-1129, codified at Colorado Revised Statutes (C.R.S.) Title 8, Article 4 (2024), C.R.S. § 8-4-126, titled "Delivery Network Company (DNC) and Transportation Network Company (TNC) Acts Labor Rules (Data Labor Rules)," dated Sept. 30, 2024.

About Walmart

Walmart is a people-led, tech-powered omnichannel retailer dedicated to helping people save money and live better – anytime and anywhere. Coloradans can visit our 88 stores and 17 Sam's Clubs across the state – which employ more than 30,000 associates – and shop online, often through their mobile devices, to take advantage of our Every Day Low Prices.

Walmart launched the Spark Driver DNC to build and scale its last-mile delivery capabilities. Drivers on this platform pick up orders and make deliveries from Walmart, Sam's Club, and other retailers. The platform provides drivers with a reliable, flexible, and convenient way to earn money. Drivers on the platform enjoy the freedom of deciding when, where, and how frequently to perform deliveries. As the platform grows, we continue to make enhancements designed to improve the driver experience, make the delivery process more seamless, and take appropriate steps to help the experience be a safe one for drivers and customers alike. Spark Driver aims to be the delivery platform of choice.

Comments in Response to CDLE's Proposed Rulemaking

Consumer Payments

Proposed C.R.S. § 8-4-126(2)(a) provides, "On the same screen on which a DNC prompts a consumer to leave a tip for a driver, the DNC shall disclose in a manner prominently displayed on the screen the amount of money that the consumer paid or will pay for the transaction."

- We request clarification in the final rules stating, "if a consumer pays monthly or annual membership dues for the delivery service, separate and apart from the individual

transaction, that the amount paid for any annual membership fees is not required to be displayed on this screen.”

Proposed C.R.S. § 8-4-126(2)(d) provides, “The information disclosed to consumers pursuant to this subsection must be (I) prominently displayed on the screen; (II) in a font that is at least 1 ½ times larger than the font used to present any other information on the screen; and (III) presented using design techniques intended to draw the eye to the information.

- We request clarification in the final rules as to what “information” means in this specific sentence. It is unclear if “information” refers to the tip only, or to the tip and the total transaction amount, or to all line items the consumer will pay for in the transaction, including taxes.
 - For example, if a consumer contracts for a food delivery and the delivery has a \$10.00 cost for the delivery itself, a \$5.00 cost for express service to receive the delivery in less than one hour, and a \$2.00 tip from the consumer, what, exactly, must be in “1 ½ times” font? The underlying statute is unclear on whether tip only; tip and base delivery cost; or the tip, base delivery, *and* express fee must be in 1 ½ font.
- Further, we request clarification on whether just numbers (in dollars and cents) must be in the 1 ½ times font or if the requirement applies to both numbers and words.
- Generally, we note that prescribing exact font size may make it difficult for consumers to read, or otherwise contribute to a sub-optimal user experience and design aesthetic. We recommend increased flexibility for this requirement, which would allow the DNC to determine the best presentation style to draw the eye to the required information.

Earnings Transparency

Proposed C.R.S. § 8-4-126(a)(IV) provides “the cardinal and intercardinal direction from where the driver is required to pick up ... and where the ... goods must be delivered.”

- We request clarification in the final rules that if the written address(es) of pick-up and drop-off locations are shown (including whether the address is N, S, E, or W on a street), that providing the written address will suffice to meet this requirement.
 - Alternatively, we would welcome a more detailed explanation and examples in the final rules as to what is meant by this requirement.
- Generally, we note that drivers on DNC platforms typically use navigation systems that provide directions, so there is limited need for seeing directional information beyond written addresses.

Proposed C.R.S. § 8-4-126(b) provides that within 24 hours after task completion, the DNC must disclose the amount of any tip.

- This requirement, as written, does not reflect the fact that many DNCs allow customers to add or adjust a tip up to 24 hours after the delivery. We request clarification in the final rules stating that “this requirement applies within 24 hours of the tip being *finalized* by the consumer.”

Proposed C.R.S. § 8-4-126(f) states that “the information disclosed pursuant to this section must be...”

- We request clarification in the final rules of what “information” means in this specific sentence. The proposal is not clear on exactly what information must be in an increased font.
- Generally, we note that prescribing exact font size may make it difficult for drivers to read, or otherwise contribute to a sub-optimal user experience and design aesthetic. We recommend increased flexibility for this requirement, which would allow the DNC to determine the best presentation style to draw the eye to the required information.

Contract Transparency

Proposed C.R.S. § 8-4-126(b) states that a DNC shall include in a contract a table of contents...on the first page of the contract.”

- We request that the final rules clarify that including a table of contents at the beginning of the contract document is sufficient to meet this requirement. Contracts displayed on digital platforms do not have page numbers in the same way that traditional documents do. Instead of turning pages, a platform app user typically scrolls through a document.

Proposed C.R.S. § 8-4-126(d) states that when providing a new driver with a contract, a DNC shall prominently display the contract on the screen and email the contract at the time the driver applies.

- We request that the final rules confirm that a contract with a new driver is effective upon the date the driver signs the contract. This would eliminate ambiguity in the proposed rules regarding new drivers needing 14 days’ notice of a contract for it to take effect.

Proposed C.R.S. § 8-4-126(f) and account deactivation transparency C.R.S. § 8-4-126(a)(IV) provide that the DNC shall provide drivers with the contract and the deactivation policies in multiple languages.

- Given that some of languages were only just identified when the proposed rule was published, and time to appropriately translate is likely needed by all DNCs to properly comply, we request that the multiple language requirements be deferred for at least 120 days from finalization and publication.

Deactivation

Proposed C.R.S. § 8-4-126(b) provides that the DNC deactivation policy and revisions to it be publicly available on the CDLE’s website for at least 30 days before the policy is enforceable.

- We request that the rules state that public posting of the policy is optional. Requiring the public posting regarding contracts and policies between two private parties is outside of typical legislative requirements, and a breach of privacy between two private parties.
- We also request that CDLE clarify that although DNCs are required to have a deactivation policy, that policy is merely a summary of information about deactivations extracted from the driver contract. We ask that any clarification explicitly state “the deactivation policy is not meant to alter, expand upon, or change the underlying contract,

which remains the controlling document for contract conditions between the DNC and drivers."

- If the policy must be publicly displayed, we request clarification on exactly how to submit the policy (for example, there appears to be no "submit" button or website address visible on the current CLDE website) and a sense of when the Director will post the policy.
- Finally, if the DNC wants to enforce the policy starting January 1, 2025, please provide clarity on when a policy needs to be submitted. If sooner than November 15, 2024, for a January 1, 2025 effective date, we request this requirement be postponed to submission by March 15, 2025 for policies to be posted by April 1, 2025 and effective May 1, 2025 due to the time needed to prepare translations and submit them.

Rule 2.3. – "Deactivation" definition

A DNC may suspend or deactivate a driver for eligibility reasons, such as an expired drivers license or expired insurance policy.

- We request that the rules provide an exemption from having to comply with the deactivation and reconsideration processes for reasons unrelated to driver behavior.
- We also agree with the recommendations provided to this rulemaking docket by Uber (on behalf of Portier, LLC, a subsidiary of Uber), submitted on Sept. 13, 2024, and incorporate its comments regarding the definition of "deactivation" found on pages 1-2 of its letter by reference.

Rule 5.2.2. – Task acceptance

- We request clarity that a DNC may display higher offer amounts for a task, or give a driver selective or preferential access to task offers, so long as the driver has at least 60 seconds to decide whether to accept an offer.

Rule 5.3. – Disclosures to consumers and driver safety

- The legislative intent regarding disclosures to consumers and driver safety appears to request the consumer turn on lights, clear walkways, and secure pets prior to driver arrival. Given that different DNC platforms have different cadences for communicating with customers, and the amount of time technical work takes to change these procedures, we recommend that DNCs provide these three information pieces to consumers, but also be given flexibility to provide the notices anytime between the time the order is placed by the consumer, and the time the driver leaves the pickup location to drop off the items.
 - Alternatively, we request that implementation of this section go into effect July 1, 2025, rather than January 1, 2025.

Effective Date(s) and New Technological Requirements

- We respectfully request that effective date(s) throughout the proposed rules be reasonably adjusted to account for the fact that this rulemaking may not be finalized by January 1, 2025. Even if CDLE is able to finalize prior to that date, DNCs may not have the necessary time to understand any clarified definitions and/or provisions, and

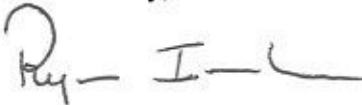
incorporate that new information into compliance plans, legal documents, and other administrative and operational processes.

- Generally, we request effective date(s) at least 120 days from finalization and publication.
- Further, if CDLE introduces new technological requirements through the rulemaking process, we respectfully request that the effective date of those new requirements be no sooner than January 1, 2026, to allow for sufficient “build time” for any tech-based solutions that may be necessary under the final rules.

####

Thank you for the opportunity to provide comments on this matter. If you have any questions, or if Walmart can be of any further assistance to CDLE as it works to finalize this rulemaking, please contact me at Ryan.Irsik@walmart.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Irsik". The signature is written in a cursive, flowing style.

Ryan Irsik
Director, State and Local Government Relations
Walmart Inc.