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November 1, 2024

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

Re: Comments on Proposed Rules Implementing House Bill 24-1129 (Delivery Network Company Act)

Dear Director Moss:

Instacart submits the below comments regarding the rules proposed by the Colorado Department of Labor and Employment ("CDLE" or "the Department") to implement House Bill 24-1129 (the Delivery Network Company Act, herein "HB-1129").

By way of brief background, Instacart is a San Francisco-based technology company that, among other business ventures, develops proprietary software used to create a multi-sided platform through which users can purchase groceries and consumer packaged foods from local retail partners and arrange for those goods to be delivered by third-party Shoppers on an expedited basis. Instacart began as and remains a technology company, devoting much of its business to developing and maintaining the complex and proprietary technology and related infrastructure necessary to operate its multi-sided platform. We welcome the opportunity to share our views on these regulations with the CDLE.

At the outset we note that HB-1129's definition of "driver" includes those individuals who provide delivery services (referred to by Instacart as "Shoppers"). To be consistent with the language of the statute, we use the term "driver" throughout these comments.

With regard to the proposed rules, Instacart offers the following specific recommendations:

Section 8-4-126(1)(f)(definition of driver). HB-1129 requires a series of disclosures designed to ensure that a driver providing service to a DNC is given appropriate information as to their compensation, travel time, mileage, and the like. The statute is plainly intended to provide this information to drivers who provide such services on a sustained and regular basis (*see, e.g.* section 8-4-126(3)(e) (requiring aggregate disclosure of information on a monthly or quarterly basis)). In light of this fact, and so as to minimize the burden on DNCs with respect to drivers who may provide services on a limited or highly sporadic basis, we urge that CDLE clarify the definition of driver for those individuals who do not regularly provide services to the DNC. We suggest the below language:

> Rule 2.7 "Driver" has the meaning provided in C.R.S. § 8-4-126(1)(f) for purposes of the DNC Act, and the meaning provided in C.R.S. § 8-4-127(1)(h) for purposes of the TNC Act. For purposes of this definition, a "personal vehicle" includes any vehicle that a DNC or TNC allows for performing services through its digital platform. **"Driver" does not include an individual providing delivery services through a delivery network company's digital platform on a de minimis basis. For purposes of this section, "de minimis" is defined as providing less than one delivery task in each of the immediately preceding three months.**

Section 8-4-126(1)(b)(deactivation). Section 8-4-126 generally defines deactivation to mean a DNC imposing a restriction on a driver's access to its platform for more than 72 hours. Proposed rule 2.3 in turn clarifies what shall be considered a deactivation or suspension and what does not fall within that definition. Although uncommon, there are instances where access to a platform may be limited due to a technology outage, routine maintenance, or other acts beyond the control of the DNC (*e.g.*, limiting access to the platform during weather-related or similar emergencies). We urge that CDLE expressly make clear that these instances do not constitute suspension or deactivation within the meaning of the statute:

> **2.3(C)"Deactivation" or "suspension" does not include a limitation on restriction of access to the digital platform where such limitation or restriction is a result of a technology, software, or network outage, routine maintenance of the platform, or a result of a weather-related or similar emergency that may threaten the safety of a driver.**

Sec. 8-4-126(3)(b), (d) (disclosure of compensation to drivers). Proposed Rule 5.1 would implement Section 8-4-126(3) of HB-1129. That section generally provides that within twenty-four hours of the completion of a delivery task, a DNC must disclose the amount paid to the driver; any tip paid by the driver; the time spent on the delivery task; the actual distance traveled for the delivery task; and, where a task or transaction is canceled, who initiated the cancellation. While these provisions may be useful in those instances where an order is cancelled but a driver still receives some compensation (*e.g.*, when an order is cancelled by a customer after a driver has begun completion of the task), it serves no useful purpose where an order is cancelled and a driver receives no compensation. Indeed, in those instances, much of the information otherwise required to be disclosed (amount paid; tip; time spent; distance traveled) would be inapplicable. For this reason, we urge the Department to make clear in any final regulation that the disclosures required under 8-4-126(3) are not applicable where a task is cancelled and the driver receives no compensation by including the following language:

> **5.1.3 The disclosures otherwise required under C.R.S. 8-4-126(3) are not required for a delivery task or a transaction that is cancelled and for which the driver is not compensated.**

Sect. 8-4-126(3)(a)(IV) (location/directional transparency). Section 8-4-126(3)(a)(IV) of HB-1129 requires that a DNC disclose, among other things, the address or addresses where goods will be picked up, and "the cardinal and intercardinal direction" from the location where the driver is required to pick up goods to the location where such goods will be delivered. We

recommend that CDLE make clear that this requirement is satisfied where a DNC provides the driver at the time a task is offered a map showing the approximate location of both the drop off and delivery locations. This is both more feasible technically and likely to provide greater information than merely informing the driver that its drop-off location is "north by northeast" of its pick-up location, and we suggest the following language:

> **5.1.4. The requirement that a DNC disclose information regarding the pick-up and delivery location contained in C.R.S. 8-4-126(3)(a)(IV) is satisfied where the DNC discloses to the driver on a smartphone or similar screen a map showing the approximate location of each.**

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We thank you again for the opportunity to share these comments with the Department. If you or your staff have questions or with to discuss any of these recommendations in further detail, please do not hesitate to contact the undersigned below directly.

Sincerely,

Jessica Lynam

Manager, US and Canada Government Affairs
Instacart