



**Testimony of Matthew W. Daus, Esq.,
President, International Association of Transportation Regulators**

**Re: New York City Department of Transportation Proposed Rules to Amend Traffic Rules
in Relation to the Demonstration or Testing of Motor Vehicles with Autonomous Vehicle
Technology on Any Public Highway in the City of New York**

Testimony Submitted: August 31, 2021
Date of Public Hearing: September 1, 2021, 10:00 am

I am the *President* of the **International Association of Transportation Regulators** (“IATR”), www.iatr.global, and submit the within testimony today to the New York City Department of Transportation (“NYC DOT”) relating to proposed rules to implement a permitting process for the demonstration and testing of vehicles equipped with autonomous vehicle (“AV”) technology in NYC. By way of background, I am the former longest serving NYC Taxi & Limousine Commissioner/Chair/CEO, and have been involved for many years now in legal, policy and regulatory issues involving autonomous vehicles.

I was selected by the U.S. Government several years ago – namely the United States Department of Transportation and the Transportation Research Board of the National Academy of the Sciences (TRB) – to be part of a 5 person delegation to develop a research agenda with the European Union resulting in an extensive report on the socio-economic impacts of AV¹. Also, I have served as co-chair of the TRB’s Legal Forum on AVs (Legal Frameworks for Emerging Technologies in Transportation) and as a member of the TRB’s Forum on AVs and Shared Mobility Services. As a lawyer I have extensive experience in transportation regulation, labor & employment, insurance/torts, administrative law, and many of the key areas involving AV testing and implementation. I founded and chair the Transportation Practice Group at the law firm of Windels Marx Lane & Mittendorf, LLP, where I am a partner.

About the IATR & Its Model Regulations/Best Practices for AV Testing

The IATR is a non-profit educational association made up of hundreds of government transportation officials representing the world’s most active regulators and policy-makers in for-hire ground transportation. For the past 34 years, the IATR has encouraged close cooperation and sharing of information among the various entities that regulate transportation industries while working to resolve common problems. The organization’s motto is “***Multi-Modal Mobility Innovation for All,***” and its membership includes government regulators of taxicabs, liveries, black cars, limousines, paratransit, micro-mobility services, buses and motor coaches, and transportation network companies (“TNCs”), as well as public transit agencies, departments of transportation and motor vehicles, insurance departments, airports, and planning agencies. The

¹ <https://www.nap.edu/catalog/25359/socioeconomic-impacts-of-automated-and-connected-vehicles>



August 31, 2021

Page 2

IATR works closely and in partnership with the University Transportation Research Center (UTRC) (www.utrc2.org) located at the City College of New York of the City University of New York, where I serve as Transportation Technology Chair (and previously, as a CUNY Distinguished Lecturer).²

Several years ago, the IATR formed an Autonomous Vehicle (AV) Working Group to develop model regulations and best practices for Shared-Connected & Autonomous Electric Vehicle (S-CAEV) Implementation. Starting in 2019 at the IATR's conference in Calgary, Alberta (Canada), work began with scoping meetings on this project, with input from the various IATR subject matter committees (including the lead committee on Technology & Innovation chaired by David Do, the Director of the Department of For-Hire Vehicles in the District of Columbia). These model regulations will be based on guiding principles for regulators seeking to implement and/or experiment with Robotaxis or S-CAEVs. In 2021, the IATR engaged subject matter experts to explore issues affecting the industry and implementation, including Adam Cohen, an experienced researcher from U.C. Berkeley and the Mineta Transportation Institute in California. Issues that were scoped include: (1) safety and vehicle standards; (2) equity and accessibility; (3) data access and privacy; (4) labor concerns and workforce development; (5) governance, business models and implementation.

The goal of the IATR's AV model regulations will be to provide transportation officials with specific rules and guidelines based on best and/or accepted practices that regulators may implement through their jurisdiction's legislative or rulemaking process. To collect the best data, regulatory and policy information, and opinions of regulators from around the world, the IATR has assembled experts in each subgroup and provided a consensus-building process for what each group seeks to include as "minimum standards" in the model regulations. These minimum standards will form the basis of the model regulations and be provided for comment at an international hearing to be held at IATR's 2021 conference, which will be held virtually from December 13-17, 2021. The final model regulations will be subject to comments from the IATR's

² The UTRC at City College is one of ten original Centers established by Congress in 1987 with the recognition that transportation plays a key role in the nation's economy and the quality of life of its citizens. The Center at City College functions as the lead institution of a consortium of twelve universities. UTRC functions as a consortium of 19 universities throughout the region: *City University of New York, Clarkson University, Columbia University, Cornell University, Hofstra University, Manhattan College, New Jersey Institute of Technology, New York Institute of Technology, New York University, Polytechnic Institute of NYU, Rochester Institute of Technology, Rowan University, Rensselaer Polytechnic Institute, Rutgers University, State University of New York, Stevens Institute of Technology, Syracuse University, The College of New Jersey, and University of Puerto Rico.*



August 31, 2021

Page 3

Advisory Board, as well as other government, academic, and non-profit transportation organizations.³

IATR's Observations Regarding NYC DOT's Proposed AV Regulations

My testimony today will endeavor to share research conducted by the IATR, as we are currently engaged in a project involving the development of model regulations and best practices for the testing and implementation of autonomous vehicles. The lessons learned thus far will be compared and contrasted with the proposed rulemaking by the NYC DOT, and will highlight areas of deviation from the benchmarking we have been performing. Issues and concerns will be highlighted, and we hope to work collaboratively with NYC DOT to help develop appropriate incentives, safety protocols and regulatory uniformity among multiple US jurisdictions our organization represents.

With respect to NYC DOT's proposed rules for AV testing, while the IATR applauds New York City for considering the integration of AV technology into its transportation ecosystem, the proposed rules, as currently drafted, deviate from current accepted regulatory practices. Namely, the proposed rules go beyond what is required under New York State law and what is required by other states, and may create a disincentive for testing in New York City. In addition, the proposed

³ Members of the IATR Advisory Board include: the American Association of Motor Vehicle Administrators (AAMVA); <https://www.aamva.org/>; American Association of State Highway and Transportation Officials (AASHTO); <https://www.transportation.org/>; Airport Ground Transportation Association (AGTA); <https://www.agtaweb.org/>; American Public Transportation Association (APTA); <https://www.apta.com/>; Alliance for Transportation Innovation (ATI21); <http://www.ati21.org/>; City Innovate; <https://www.cityinnovate.com/>; The Eno Center for Transportation; <https://www.enotrans.org/>; Keroul; <https://www.keroul.qc.ca/en/home.html>; The Institutes Griffith Foundation; <https://web.theinstitutes.org/griffith-foundation>; Intelligent Transportation Systems of America (ITSA); <https://itsa.org/>; International Association of Public Transport (UITP); <https://www.uitp.org/>; International Transport Forum, Organization for Economic Cooperation and Development (ITF-OECD); <https://www.itf-oecd.org/>; National Conference of State Transportation Specialists (NCSTS); <http://ncsts.naruc.org/>; National Conference on Weights and Measures (NCWM); <https://www.ncwm.com/>; National Institute for Occupational Safety and Health (NIOSH) within the Center for Disease Control (CDC) and Prevention; <https://www.cdc.gov/niosh/index.htm>; Responsible Hospitality Institute (RHI); <https://rhiweb.org/>; Shared-Use Mobility Center (SUMC); <https://sharedusemobilitycenter.org/>; Transportation Sustainability Research Center (TSRC) at the University of California, Berkeley; <https://tsrc.berkeley.edu/>; University Transportation Research Center (UTRC) at City College, City University of NY; <http://www.utrc2.org/>; and Womanium. <https://www.womanium.org/>



August 31, 2021

Page 4

rules, as drafted, provide no protections for data that autonomous vehicle technology companies are required to provide as a condition of the permit.

Benchmarking NYC to Other AV Testing Paradigms

Many of the provisions of the proposed NYC rules exceed what is commonly found in autonomous vehicle technology testing and deployment laws in other states—including those jurisdictions that have allowed testing for a decade. Like New York State, many states have adopted regulations governing the testing and demonstration of AVs. In Arizona, California, Florida, and Nevada, testing has been underway for years. When compared with these states, the proposed NYC rules are more restrictive. Florida and Arizona have few regulations and compliance is minimal, while in California, state law explicitly preempts cities from regulating AV testing.

Virtually no cities have adopted rules or regulations like those being proposed by NYC, as state laws typically preempt such regulations. Many AV laws explicitly do so. For example, Nevada—the first state to authorize autonomous vehicles in 2011—explicitly preempts local regulation of AV testing and prohibits local governments from imposing any tax, fee or other requirement.⁴ In Pennsylvania, the City of Pittsburgh calls for companies pursuing AV testing in the City to adhere to guidelines for such testing.⁵ These requirements complement and augment the Automated Vehicle Testing Guidance adopted by the Pennsylvania Department of Transportation (PennDOT), the Legislature of the Commonwealth of Pennsylvania, and Office of the Governor. Pursuant to guidelines issued by the Pittsburgh Department of Mobility and Infrastructure, companies pursuing AV testing must provide a “submission” to the city. There is no requirement that the City of Pittsburgh approve the company to test in the city; the arrangement is voluntary and was crafted in collaboration with stakeholders. The major players developing autonomous driving systems in Pittsburgh were on hand for the signing of the city’s order, demonstrating a strong emphasis on partnership.⁶

NYC DOT’s proposed rules require entities that have already been approved by NYS for AV testing to obtain an additional permit from NYC – yet no other cities establish their own set of safety regulations and permitting process when the state has already approved the company to test in the city. Further, the proposed NYC rules require a certification that “the test vehicle(s) will

4

⁵ <https://pittsburghpa.gov/domi/autonomous-vehicles>

⁶ *Id.*



August 31, 2021

Page 5

operate in New York City more safely than a human driver.” While it is not uncommon for AV laws to require some assurances of safety and proof that the vehicle has been tested, this standard is unique and goes beyond that of NY State law or local laws in any other city. In addition to the local regulatory authority approval, and human driver requirements, the proposed rules are also unique in imposing requirements for a cybersecurity plan, demonstration test and geographic areas for testing. The NYC rules even go as far as to include indemnity to the city of New York against liabilities associated with the testing of AVs. None of these requirements are found in other city laws, and each of these provisions goes far beyond NY State law.

Data Security, Access & Privacy Issues

The proposed NYC DOT rules do not provide specific protections or assurances necessary to prevent harmful disclosure of the records, data, and information provided by autonomous vehicle program participants. As a government agency, NYC DOT is required to disclose records and data that it collects under the NYS Freedom of Information Law (“FOIL”). The NYC DOT’s rules are subject to NY State FOIL laws, which contain strong presumptions for the disclosure of government records – including data submitted to the NYC DOT by AV companies under the proposed regulations. The proposed rules could require participants to submit data and information that may be considered proprietary, confidential, and may contain trade secrets. NYC DOT could include language in the proposed rules that would seek to utilize various disclosure exemptions (such as the FOIL trade secret exemption) to protect disclosure of AV data to competitors or other third parties with nefarious intentions (such as hackers). However, there is no guarantee that a state court would not overrule such local regulations as preempted by the controlling intent of the state FOIL law, and allow for the release of such data – even over the objections of the NYC DOT.

The disclosure of commercial records of autonomous driving technology could result in competitive injury for companies participating in the autonomous vehicle program. The proposed rules do not protect trade secrets or proprietary data despite the fact that autonomous vehicles rely on robust internet networks that generate high volumes of data. Companies may look to test AVs elsewhere as these privacy risks will surely be seen as a deterrent to testing in New York. The risk of providing such data to the general public without restraint is the possibility of providing bad actors with the knowledge and means to threaten public safety and the commercial viability of companies involved. While New York’s FOIL statute may provide protection from public disclosure, and while codifying the same in AV regulations could provide for greater assurances that public and company data is safeguarded, there is simply no guarantee that such information



August 31, 2021

Page 6

will not be disclosed under existing law – absent a specific amendment to the FOIL statute, or the NY State AV Testing statute. This can be done, and NYC DOT may wish to consider tabling the data provision information while seeking NY State legislation to resolve this issue definitively. For example, looking to how Transportation Network Companies (“TNCs”) are regulated in this area, New York state TNC law exempts from public disclosure the names and identifying information of TNC drivers obtained for an audit.⁷

Another possible means to prevent certain records from disclosure under FOIL is the use of a third-party validator or secure data platform that can house the data on private servers. A private and secure third-party validator or clearinghouse could collect, monitor, and audit items such as granular test data - with appropriate confidentiality agreements in place between the government agencies and each AV company – to store, anonymize and report only certain data to the government in final form. Only the dashboard or final data results would be sent to government servers, protecting the raw data from disclosure under FOIL. This solution may be preferable to a simple FOIL amendment, as it would provide additional cyber-security benefits to guard against hackers. I have published two relevant articles that analyze these issues in more depth, which I would recommend be reviewed by NYC DOT staff, in a Purdue University textbook chapter⁸ and a Westlaw/Thomson Reuters report.⁹

IATR & NYC DOT Working Together

The IATR is happy to share our resources as well as our draft model regulations, with the NYC DOT to inform its rulemaking process. IATR also welcomes NYC DOT to share its research and findings that formed the basis for this rule proposal (and any final rules promulgated) with the IATR, so our members can include any relevant information as part of its ongoing best practices project. As it stands, the proposed AV rules do raise several unique issues and concerns, and could create a barrier to entry and disincentives for companies looking to conduct AV testing in NYC. IATR suggests that both groups collaborate further with one another before moving forward, and would request that NYC DOT attend and present at our virtual conference and international public hearing, which will be held the week of December 13th 2021. Ideally, such collaboration should

7

⁸ Matthew Daus, “Ground Transportation Big Data Analytics and Third Party Validation: Solutions for a New Era of Regulation and Private Sector Innovation,” Purdue University, In: Ukkusuri S., Yang C. (eds) Transportation Analytics in the Era of Big Data. Complex Networks and Dynamic Systems, vol 4. pp 47-80. Springer, Cham (July 2018) https://link.springer.com/chapter/10.1007/978-3-319-75862-6_3.

⁹ Matthew Daus, “Transportation Network Companies: Passenger Data Security and Privacy Issues, Sharing Economy 300:100,” Westlaw, Thomson Reuters Legal (December 2017). <https://bit.ly/3kJD0EX>



August 31, 2021
Page 7

take place prior to finalizing the instant proposed NYC DOT regulations, as NYC DOT may be able to obtain new information and research at that time which could assist in formulating its final testing protocols.

Sincerely,

A handwritten signature in blue ink that reads 'Matthew W. Daus'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Matthew W. Daus, Esq.
President