



U.S. Department of Transportation
**National Highway Traffic Safety
Administration**



1200 New Jersey Avenue SE.
Washington, DC 20590

July 26, 2023

CERTIFIED AND ELECTRONIC MAIL

Ms. Dinna Eskin
Senior Director, Legal
Tesla, Inc.
1 Tesla Road
Austin, Texas 78725

Dear Ms. Eskin:

On August 13, 2021, the National Highway Traffic Safety Administration (NHTSA)'s Office of Defects Investigation (ODI) opened Preliminary Evaluation (PE) No. 21-020 to assess the performance of the Autopilot system installed on Tesla vehicles. On June 8, 2022, ODI upgraded PE21-020 to Engineering Analysis (EA) No. 22-002. In the opening resume for this EA, ODI stated that it would be assessing "the technologies and methods used to monitor, assist, and enforce the driver's engagement with the dynamic driving task during Autopilot operation."

Recently, NHTSA became aware that Tesla has introduced an Autopilot configuration that, when enabled, allows drivers using Autopilot to operate their vehicles for extended periods without Autopilot prompting the driver to apply torque to the steering wheel. NHTSA is concerned that this feature was introduced to consumer vehicles and, now that the existence of this feature is known to the public, more drivers may attempt to activate it. The resulting relaxation of controls designed to ensure that the driver remain engaged in the dynamic driving task could lead to greater driver inattention and failure of the driver to properly supervise Autopilot.

NHTSA is charged under the National Traffic and Motor Vehicle Safety Act (Safety Act), 49 U.S.C. Chapter 301, with investigating potential defects that pose an unreasonable risk to motor vehicle safety. To oversee compliance with the requirements of the Safety Act and associated regulations, and to evaluate the changes to Tesla's driver monitoring system and the potential impacts on safety, we are issuing the attached Special Order to Tesla.

You must respond in full to the requests in the enclosed Special Order by **August 25, 2023**. If you do not timely, accurately, or completely respond to the Requests in the Special Order, you may be subject to civil penalties of up to \$26,315 per day.

If you have any questions, please contact Thomas Healy of my staff at (202) 366-7161 or thomas.healy@dot.gov.

Sincerely,

A solid black rectangular box used to redact the signature of John Donaldson.

John Donaldson
Acting Chief Counsel

cc: Eric Williams, ewilliams@tesla.com
David Kim, dkim@tesla.com

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

1200 New Jersey Avenue SE
Washington, DC 20590

In re:)
)
EA 22-002)
Tesla, Inc.)
)

SPECIAL ORDER DIRECTED TO TESLA, INC.

To:
Ms. Dinna Eskin
Senior Director, Legal
Tesla, Inc.
1 Tesla Road
Austin, Texas 78725

This Special Order is issued by the National Highway Traffic Safety Administration (NHTSA), an Operating Administration of the United States Department of Transportation, pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. §§ 510.7-510.8.¹

As described in the accompanying letter and based on currently available information, NHTSA is concerned about the safety impacts of recent changes to Tesla's driver monitoring system. This concern is based on available information suggesting that it may be possible for vehicle owners to change Autopilot's driver monitoring configurations to allow the driver to operate the vehicle in Autopilot for extended periods without Autopilot prompting the driver to apply torque to the steering wheel.

¹ See 49 C.F.R. §§ 1.95, 501.8(d)(3) (delegations of authority).

Tesla's response to this Special Order must be provided to NHTSA's Office of the Chief Counsel by August 25, 2023. The response should be sent to Thomas Healy, Office of the Chief Counsel, at Thomas.Healy@dot.gov or, for large submissions, through the DOT Secure Large File Transfer Solution system.²

Tesla's response must be signed under oath, *i.e.*, accompanied by a declaration, signed by a responsible officer of Tesla, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Tesla to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order. 28 U.S.C. § 1746; 49 U.S.C. § 30166(g)(1)(A); 49 C.F.R. § 510.7.

Failure to respond fully or truthfully to this Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses and may subject Tesla to civil penalties of up to \$26,315 per day, up to a maximum penalty of \$131,564,183 for a related series of daily violations. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). Falsifying or withholding information in response to this Special Order may lead to criminal penalties of a fine or imprisonment of up to 15 years, or both. 49 U.S.C. § 30170(a)(1).

DEFINITIONS

Unless otherwise stated in the text, the following definitions apply to the information request set forth below:

² In order to use the File Transfer System, please email Thomas.Healy@dot.gov for a link.

- **Tesla**: means all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions, parent corporations at any tier, subsidiaries (whether or not incorporated) at any tier, and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Tesla (including all business units and persons previously referred to).
- **Agent**: means an individual, such as a representative, who is authorized to act for or in place of another.
- **Subject Software Update**: means changes to Tesla's Autopilot firmware that contain a setting, that if enabled, allows Autopilot to be operated for extended periods of time without Autopilot prompting the driver to apply torque to the steering wheel.
- **Describe**: means to provide, with respect to any act, occurrence, transaction, event, statement, communication, or conduct (hereinafter, collectively, "act"), all facts concerning any such act, including, but not limited to, a description of each act, and the date, the location, and the names and addresses of all persons involved.
- **Employee**: means a person who works in the service of another person (the employer) under an express or implied contract of hire under which the employer has the right to control the details of work performance.
- **Officer**: means a person who holds an office of trust, authority, or command, such as a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer.
- **You or Your**: means Tesla or Tesla's.
- **Document**: "Document(s)" is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements,

governmental records, business records, personnel records, work orders, documents generated through litigation, arbitration, or mediation, pleadings, mediation statements, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Tesla, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, “document(s)” also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by Tesla or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Other Terms:** To the extent that they are used in these information requests, the terms “claim,” “dealer field report,” “field report,” “fire,” “fleet,” “good will,” “make,” “model,” “model year,” “notice,” “property damage,” “property damage claim,” “rollover,” “type,” “warranty,” “warranty adjustment,” and “warranty claim,” whether used in singular or in plural form, have the same meaning as found in 49 C.F.R. § 579.4.

INSTRUCTIONS

Please follow the instructions below when providing responses to the numbered information requests in the next section.

1. Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-100), National Highway Traffic Safety Administration, by email to Thomas Healy at Thomas.healy@dot.gov or through the DOT Secure Large File Transfer Solution system.³

³ In order to use the File Transfer System, please email Thomas.Healy@dot.gov for a link.

2. Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.

3. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.

4. You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, provide an estimate. If, on the basis of attorney-client, attorney work product, or other privilege, you do not submit one or more requested documents or items of information in response to this Special Order, you must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

5. After your response to each request, state whether you previously had any responsive documents that are no longer within your possession, custody, or control, including but not limited to because the documents were lost or destroyed. If such documents ever existed: describe the documents; identify the reason that the documents are no longer in your possession, custody, or control; identify the date that you last had the documents; and identify who may have

copies of such documents.

6. If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4) or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of the Chief Counsel (NCC-100), National Highway Traffic Safety Administration, as instructed below.

7. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information (CBI) to the agency under 49 C.F.R. Part 512.⁴ Since Part 512 submissions are handled by NHTSA's Office of the Chief Counsel, any Part 512 submission should be sent to the Office of the Chief Counsel electronically. Specifically, any CBI submissions sent via email should be sent to Thomas Healy at Thomas.Healy@dot.gov.

At this time, regulated entities should not send a duplicate hardcopy of their electronic CBI submissions to DOT headquarters. For questions about CBI issues, including these modified submission procedures, please contact Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov or 202-366-8534.

8. All documents shall be produced electronically, as described below, in a common format (*e.g.*, Word, PDF, Microsoft Access) or other electronic formats commonly used by Tesla and discernable to NHTSA.

- a. Hard copy documents shall be imaged in PDF format. They shall be provided as multi-page PDFs with document level optical character recognition (OCR).

⁴ See <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>.

- b. Electronically Stored Information (ESI) shall be produced in native format (*e.g.*, Microsoft Excel) or converted to multi-page PDFs and produced along with document level OCR/extracted text.
 - c. You shall organize the documents by request number and as instructed in the request to which it responds or, if no instruction is given in a request, in chronological order by project, report, or other similar categorization responsive to that numbered request.
 - d. After the documents are so organized, and in sequential order to the request to which each responds, you shall apply Bates Numbers to the entire production.
 - e. You shall produce an index that lists the title of each document produced, the Bates Numbers on the document, and the request to which it corresponds.
9. When a request calls for a detailed narrative response, do not identify business records or other documents in lieu of providing a written narrative. A response to a request for a written narrative that solely directs NHTSA to documents will be considered non-responsive and may result in civil penalties. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). A response to a request for a detailed, narrative response that includes references to specific Bates Number(s) in addition to a written narrative will not be considered a violation of this Instruction.
10. The singular includes the plural; the plural includes the singular. The masculine gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. “And” as well as “or” shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise be construed to be outside its scope. “Each” shall be construed to include “every” and “every” shall be construed to include “each.” “Any” shall be construed to include “all” and “all” shall be

construed to include “any.” The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document requests all responses which might otherwise be construed to be outside its scope.

11. Tesla’s response to this Special Order must be under oath, *i.e.*, accompanied by a declaration, signed by a responsible officer of Tesla, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Tesla to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.

12. The requests in this Special Order are deemed to be continuing in nature so as to require additional or amended responses from you should you obtain or become aware of any new, additional, or differing responsive information or documents.

REQUESTS

1. Provide the dates that the subject software update was introduced to Tesla engineering and then consumer vehicles, the software/firmware version that first contained the subject software update for both instances, and the number of vehicles in which the subject software update is installed in both groupings. Also separately provide the number of vehicles on which the setting that reduces or eliminates instances in which Autopilot prompts the driver to apply torque has been enabled for Tesla engineering vehicles and for consumer vehicles.

2. Describe in detail the steps and or conditions necessary to activate the setting in the subject software update that reduces or eliminates instances in which Autopilot prompts the driver to apply torque has been enabled.

3. Describe in detail the steps and or conditions necessary to revert a vehicle whose subject software update was activated to its pre-activation (ordinary) state.
4. Describe in detail any differences between the setting in the subject software update that reduces or eliminates instances in which Autopilot prompts the driver to apply torque when enabled and when not enabled to Autopilot's driver monitoring system, including the amount of time that Autopilot is allowed to operate without prompting application of torque, and any warnings or chimes that are presented to the driver.
5. Describe in detail any other changes to the vehicle's user interface, Autopilot functionality, and vehicle control authority when the subject software update is enabled.
6. Describe in detail Tesla's basis or purpose in installing the subject software in on road consumer vehicles beyond the Tesla engineering vehicles, including but not limited to the justification for which consumer vehicles or vehicle owners were eligible for the subject software update. Your response should include any plans to enable the subject software in consumer vehicles within the next calendar year.
7. Describe in detail any lessons learned and/or findings from driving the vehicles with the subject software update enabled. Furnish copies of all documents related to your response to this Request.
8. Furnish copies of all documents explaining the subject software's functionality and/or any descriptions of purpose and/or goals for its use including any plans to introduce the subject software in consumer vehicles.
9. Furnish copies of instructions or test plans given to Tesla engineering staff who are responsible for driving engineering vehicles with the subject software update.
10. Furnish copies of incident or crash reports from collisions or near-misses involving

vehicles with the subject software update enabled.

Dated: July 26, 2023



John Donaldson
Acting Chief Counsel