

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

1200 New Jersey Avenue, SE  
West Building, W41-326  
Washington, DC 20590

**In re:**

**PE16-007**

**AMENDED STANDING SPECIAL ORDER DIRECTED TO TESLA MOTORS, INC.**

To:

Tesla Motors, Inc.  
1050 K Street, N.W., Suite 101  
Washington, D.C. 20001

This Amended Standing Special Order<sup>1</sup> is issued to Tesla Motors, Inc. (“Tesla”) by the Secretary of Transportation pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. §§ 510.7 and 510.8, and pursuant to a delegation of authority to the Chief Counsel of the National Highway Traffic Safety Administration (“NHTSA”), an Operating Administration of the United States Department of Transportation. 49 C.F.R. §§ 1.95, 501.8(d).

NHTSA has opened a preliminary evaluation, PE16-007, to investigate a fatal highway crash involving a 2015 Tesla Model S (which was operating with automated driving systems engaged at the time of the crash), and the design and performance of its automated driving systems. As part of its ongoing investigation, NHTSA hereby demands, by this Amended Standing Special Order, that Tesla file certain reports concerning crashes in the motor vehicles it manufactures.

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<sup>1</sup> Pursuant to 49 U.S.C. § 30166(g), this Special Order is equivalent to a subpoena.

## DEFINITIONS

To the extent used in this Standing Special Order, the following definitions apply:

1.       **“Document(s)”** is used in the broadest sense of the word under Rule 34 of the Federal Rules of Civil Procedure and shall mean all written, printed, typed, recorded, or graphic matter of every kind, nature, and description, however produced or reproduced, whether draft or final, original or reproduction, signed or unsigned, electronic or hard copy, and regardless of whether approved, signed, sent, received, redrafted, or executed, including but not limited to: written communications, letters, correspondence, facsimiles, e-mail, instant messages, text messages, agendas, memoranda, minutes, notes, summaries, reports, voicemails, films, photographs, recordings of any type, transcripts, contracts, agreements, purchase or sales orders, specifications, drawings, diagrams, diaries, journals, logs, desk calendars, interoffice communications, reports, studies, bills, checks, income statements, balance sheets, books of account, ledgers and other financial records, and all information generated by or stored by computer, including without limitation, electronic writings, records, files, reports, hard drives, backup data, removable computer storage media (such as flash drives, tapes, disks, and cards), printouts, document image files, web pages, databases, spreadsheets, software, and digital recordings, or material similar to any of the foregoing however denominated, by whomever prepared, and to whomever addressed, which are in your possession, custody or control or to which you have had or can obtain access. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color.

2.       The term **“incident”** means any crash alleged to have occurred while the motor vehicle was operating in Autopilot mode (i.e., both Traffic Aware Cruise Control and Autosteer enabled/active) or within sixty seconds of a transition from Autopilot mode to manual steering

mode.

3. The definition of “**motor vehicle**” can be found in 49 U.S.C. § 30102.

4. As used herein, the term “**notice**” is broader than as defined in 49 C.F.R. § 579.4. It consists of information that you have received from any source (whether foreign or domestic), and in any form (whether written or oral), about an incident; including, but not limited to, lawsuits, claims, complaints, demand letters, and media reports. Notice shall not be construed to include rumors from third parties that are not widely disseminated.

5. “**You**” or “**your**” means Tesla Motors, Inc., and all of its officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions, subsidiaries (whether or not incorporated) 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).

### **INSTRUCTIONS**

1. This Amended Standing Special Order supersedes and replaces the reporting obligations set forth in the Standing Special Order that was issued to Tesla on August 26, 2016.

2. This Amended Standing Special Order applies to incidents (or alleged incidents) of which Tesla received notice on or after the date of this Amended Standing Special Order.

(a) For incidents (or alleged incidents) of which Tesla receives notice on or after the date of this Amended Standing Special Order, and except as otherwise provided in subsections (b) and (c), reports shall be provided to NHTSA on a weekly basis. The weekly reports shall be submitted to NHTSA no later than 5:00 pm ET on Fridays, and

each report shall include all incidents of which Tesla received notice during the Friday through Thursday period of the prior week. (For example, incidents that Tesla learns of between Friday, October 14th and Thursday, October 20th shall be reported on Friday, October 28th.) **This is a standing reporting obligation, and shall continue until such time as NHTSA notifies you in writing that such reports are no longer required.**

(b) For incidents (or alleged incidents) of which Tesla receives notice on or after the date of this Amended Standing Special Order and that involve death or serious injury, Tesla shall also verbally report the incident to Jeffrey Quandt, Division Chief, Office of Defects Investigation, as soon as possible, but no later than twenty-four (24) hours after Tesla is notified of the incident.

(c) For incidents (or alleged incidents) of which Tesla receives notice on or after the date of this Amended Standing Special Order and for which Tesla desires to make a public statement prior to the reporting deadline in subsection (a), reports shall be provided to NHTSA no less than twenty-four (24) hours before such public statement is made.

3. The reports required under this Amended Standing Special Order shall be provided by electronic mail to Jeff Quandt (Jeff.Quandt@dot.gov), Division Chief, Office of Defects Investigation, with a copy to Kerry Kolodziej (Kerry.Kolodziej@dot.gov), Acting Assistant Chief Counsel for Litigation and Enforcement, and Beth Mykytiuk (Elizabeth.Mykytiuk@dot.gov), Senior Trial Attorney.

4. You are required to respond to every request listed in this Amended Standing Special Order, including subparts. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. Examples include, but are not

limited to, situations where you do not possess the information requested at the time the report is due or where you are required to redact the information because it is protected from disclosure under foreign privacy law. If you do not possess the information necessary to fully complete a report required by this Amended Standing Special Order on or before its due date, you must provide as much information as you have available at the time the report is due and supplement the report promptly upon obtaining the remaining information.

5. NHTSA reserves the right to request documents and additional information relating to any incident.

6. Failure to respond fully or truthfully to this Amended Standing Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses, and may subject you to civil penalties of up to \$21,000 per day, up to a maximum penalty of \$105,000,000 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).<sup>2</sup>

7. If you claim that any of the information or documents provided in response to this Amended Standing Special Order constitutes confidential material within the meaning of 5 U.S.C. §§ 552(b)(4) or 552(b)(6), or is protected from disclosure pursuant to 18 U.S.C. § 1905 or other applicable law, then 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 Chief Counsel (NCC-100), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590. A copy of your request for confidential treatment and accompanying materials shall be sent by electronic mail to Beth Mykytiuk (Elizabeth.Mykytiuk@dot.gov).

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<sup>2</sup> Effective March 17, 2016, the daily civil penalty was increased from \$7,000 to \$21,000, and the maximum civil penalty was increased from \$35 million to \$105 million. *See* Fixing America's Surface Transportation Act (the "FAST Act"), Pub. L. 114-21, § 24110(a)(2), 129 Stat. 1312 (Dec. 4, 2015).

8. As used herein, 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 Amended Standing 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 requests all responses which might otherwise be construed to be outside its scope.

9. The reporting obligations established by this Amended Standing Special Order, issued pursuant to 49 U.S.C. § 30166(g), are in addition to your current reporting obligations under the National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. § 30101, *et seq.*, including, but not limited to, early warning reporting requirements established by the Transportation, Recall Enhancement, Accountability and Documentation Act (the “TREAD Act”), Pub. Law 106-414, codified at 49 U.S.C. § 30166(m), and its implementing regulations, 49 C.F.R. Part 579.

10. You are **not** required to submit the requested reports under oath.

### **REQUEST**

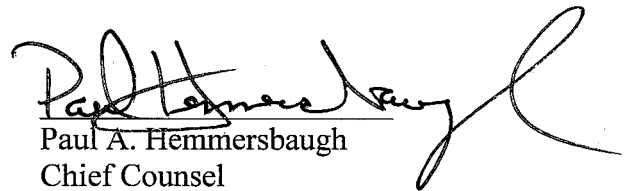
In accordance with Instruction No. 2 above:

1. File a report that provides the following information: (i) the date on which you were first notified or learned of the incident; (ii) the date and location of the incident; (iii) the firmware version running on the vehicle at the time the incident occurred; (iv) the motor vehicle owner’s name, address, and telephone number; (v) the model and model year of the motor

vehicle; (vi) the Vehicle Identification Number (VIN); (vii) the number and description of any injuries or fatalities; (viii) the vehicle speed at impact; (ix) the Autopilot status at impact; (x) for incidents in which the motor vehicle was not in Autopilot mode at the time of impact, state the time interval from Autopilot operation to the time of impact; (xi) a summary of the alleged incident; and (xii) a summary of your preliminary assessment of the alleged incident, including the factors that may have caused or contributed to the incident and whether a motor vehicle or site inspection has occurred or been scheduled. Reports shall be submitted in Microsoft Excel, in the format attached as Appendix A.

In accordance with Instruction No. 2, this Amended Standing Special Order creates a standing reporting obligation, and shall continue until such time as NHTSA notifies you in writing that such reports are no longer required.

Dated: October 14, 2016

  
Paul A. Hemmersbaugh  
Chief Counsel