



July 3, 2023

**SENT VIA E-MAIL**

Eddie Gates  
Director, Field Quality  
Tesla, Inc.  
45500 Fremont Blvd.  
Fremont, CA 94538

NEF-104  
EA22-002

Dear Mr. Gates,

This letter is to request current data / updates to Tesla's responses to three requests sent to you on August 18, 2022, as part of the Office of Defects Investigation (ODI) of the National Highway Traffic Administration (NHTSA) Engineering Analysis (EA22-002).

Unless otherwise stated in the text, the following definitions apply to these information requests:<sup>1</sup>

- **Level 2 ADAS:** a driver support feature (Advanced Driver Assistance System) on the vehicle that can control both steering and braking/accelerating simultaneously under some circumstances. The human driver must remain fully and continuously engaged in the (Level 2) driving task.<sup>2</sup>

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<sup>1</sup> Unless otherwise specified herein, any terms in these information requests that relate to an Advanced Driver Assistance System (ADAS), including the SAE International levels of driving automation, should be construed to have the same meaning as any overlapping term defined in NHTSA First Amended Standing General Order 2021-01, which is located at [https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-08/First\\_Amended\\_SGO\\_2021\\_01\\_Final.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-08/First_Amended_SGO_2021_01_Final.pdf)

<sup>2</sup> "Level 2" means the same as and is coterminous with the definition of "Level or Category 2 - Partial Driving Automation" in SAE J3016 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles § 5.3 (April 2021).

<sup>3</sup> "ODD" means the same as and is coterminous with the definition of "Operational Design Domain" in SAE J3016 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles § 3.22 (April 2021).

- **DDT**: Dynamic Driving Task or all of the real-time operational (lateral and longitudinal movement of vehicle) and tactical (planning component) functions required to operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints, and including without limitation:
  - a. Lateral vehicle motion control via steering (operational);
  - b. Longitudinal vehicle motion control via acceleration and deceleration (operational);
  - c. Monitoring the driving environment via object and event detection, recognition, classification, and response preparation (operational and tactical);
  - d. Object and event response execution (operational and tactical);
  - e. Maneuver planning (tactical); and
  - f. Enhancing conspicuity via lighting, signaling, and gesturing, etc. (tactical).<sup>4</sup>
- **OEDR**: Object and event detection and response or the subtasks of the DDT that include monitoring the driving environment (detecting, recognizing, and classifying objects and events and preparing to respond as needed) and executing an appropriate response to such objects and events (i.e., as needed to complete the DDT and/or DDT fallback).<sup>5</sup>
- **Subject System**: Suite of software, hardware, data, and any other related systems on or off the vehicle that contributes to the conferral of any vehicle capabilities that Tesla labels Level 2 or above, including but not limited to the various “Autopilot” packages.
- **Subject Vehicles**: All Tesla vehicles, model years 2014 - 2023, equipped with the subject system at any time, and manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.
- **Tesla**: Tesla, Inc. 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, 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), who are or, in or after January 1st, 2011 were involved in any way with any of the following related to the alleged defect in the subject vehicles:
  - a. Design, engineering, analysis, modification or production (e.g. quality control);
  - b. Testing, assessment or evaluation;

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<sup>4</sup> “DDT” means the same as and is coterminous with the definition of “Dynamic Driving Task” in SAE J3016 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles § 3.13 (April 2021).

<sup>5</sup> “OEDR” means the same as and is coterminous with the definition of “Object and Event Detection and Response” in SAE J3016 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles § 3.20 (April 2021).

- c. Consideration, or recognition of potential or actual defects, reporting, record-keeping, and information management, (e.g., complaints, field reports, warranty information, part sales), analysis, claims, or lawsuits; or
  - d. Communication to, from or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.
- **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, pleadings, 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,” “consumer complaint,” “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 CFR 579.4.

In order for my staff to evaluate the alleged defect, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. Insofar as Tesla has previously provided a document to ODI, Tesla may produce it again or identify the document, the document submission to ODI in which it was included and the precise location in that submission where the document is located. When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). 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 repeat the applicable request verbatim above each response. After Tesla's response to each request, identify the source of the information and indicate the last date the information was gathered.

1. State, by model and model year, the number of subject vehicles Tesla has manufactured for sale or lease or operation in the United States. Separately, for each subject vehicle manufactured to date by Tesla, state the following:
  - a. Vehicle identification number (VIN);
  - b. Model;
  - c. Model Year;
  - d. Subject component trade / trim name, part number and design version installed as original equipment; including:
    - i. Software version;
    - ii. Hardware version;
    - iii. Cabin Camera installed (yes / no);
  - e. Date of manufacture;
  - f. Date warranty coverage commenced;
  - g. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease);
  - h. Latest known vehicle mileage and commensurate date;
  - i. Whether the vehicle is "Tesla Vision"- equipped (subject system relies on cameras only and not radar);
  - j. Subject component trade / trim name, part number and design version installed as an aftersales customer- requested upgrade; including:
    - i. Software version;
    - ii. Firmware version;
    - iii. Hardware version;
    - iv. Cabin Camera installed (yes / no);
    - v. The date on which the vehicle was admitted into the "Full-Self Driving beta" program; and
  - k. Date and identities of the most recent software, firmware, and hardware updates.

Provide the table in Microsoft Access 2010, or a compatible format, entitled "PRODUCTION DATA."

2. Furnish cumulative mileage covered overall and separately with the subject system engaged by subject vehicle model / Model Year vs Calendar Year / Quarter.

Provide the table in Microsoft Excel 2010 or compatible format entitled “MILEAGE ACCUMULATION.”

3. Please update Tesla’s September 19, 2022 response to Request 4 of ODI’s August 18, 2022 EA22-002 Information Request to current from the Tesla’s original response:

For each trade name / trim level of the subject system available in the subject vehicles, describe all modifications or changes made by, or on behalf of, Tesla in the design, material composition, manufacture, quality control, supply, function, or installation of the subject system, from the start of production to date, which relate to, or may relate to driver engagement / attentiveness and OEDR by the subject system in the subject vehicles. For each such modification or change, provide the following information:

- a. The date or approximate date on which the modification or change was incorporated into vehicle production;
- b. A detailed description of the modification or change;
- c. The reason(s) for the modification or change;
- d. The hardware, firmware, and software names and numbers of the original version;
- e. The hardware, firmware, and software names and numbers of the modified version;
- f. Primary distribution method of related firmware and software updates (over the air or in-person service); and
- g. When the modified version / update was made available as a service component.

Also, provide the above information for any modification or change that Tesla is aware of which may be incorporated into vehicle production or pushed to subject vehicles in the field within the next 120 days.

### **Legal Authority for This Request**

This letter is being sent to Tesla pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information.

### **Civil Penalties**

Tesla’s failure to respond promptly and fully to this letter could subject Tesla to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) The Vehicle Safety Act, as amended, 49 U.S.C. § 30165(a)(3), provides for civil penalties of up to \$26,315 per violation per day, with a maximum of \$131,564,183 for a related series of daily violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. *See* 49 CFR 578.6 (as amended by Fixing America’s Surface Transportation Act (the “FAST Act”), Pub. L. 114-94, § 24110(a)(2), 129 Stat. 1312 (Dec. 4, 2015)). This includes failing to respond completely, accurately, and in a timely manner to ODI information requests.

If Tesla cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, Tesla does not submit one or more requested documents or items of information in response to this information request, Tesla must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the 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.

### **Confidential Business Information**

**All business confidential information must be submitted directly to the Office of Chief Counsel as described in the following paragraph and should not be sent to this office.** In addition, do not submit any business confidential information in the body of the letter submitted to this office. Please refer to EA22-002 in Tesla's response to this letter and in any confidentiality request submitted to the Office of Chief Counsel.

If Tesla claims that any of the information or documents provided in response to this information request constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4) or are protected from disclosure pursuant to 18 U.S.C. § 1905, Tesla must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512. Additional information can be found here: <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>.

If you have any questions regarding submission of a request for confidential treatment, contact Daniel Rabinovitz, Trial Attorney, Office of Chief Counsel at [daniel.rabinovitz@dot.gov](mailto:daniel.rabinovitz@dot.gov) or (202) 366-8534.

### **Due Dates**

Tesla's response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by **July 19, 2023**. Tesla's response must include all non-confidential attachments and a redacted version of all documents that contain confidential information.

Please send email notification to Steven Posada at [STEVEN.POSADA@DOT.GOV](mailto:STEVEN.POSADA@DOT.GOV) and to [ODI\\_IRresponse@dot.gov](mailto:ODI_IRresponse@dot.gov) when Tesla sends its response to this office and indicate whether there is confidential information as part of Tesla's response.

If you have any technical questions concerning this matter, please call Steven Posada of my staff at (202) 366-9402.

Sincerely,



Tanya Topka, Acting Director  
Office of Defects Investigation

## ENCLOSURE – INFORMATION FOR REQUESTS FOR CONFIDENTIAL TREATMENT

If you believe that your response contains any material that you claim is confidential business information, submit these materials to NHTSA's Office of the Chief Counsel in accordance with 49 C.F.R. Part 512. **All requests for confidential treatment must be submitted directly to the Office of the Chief Counsel. Upon request, ODI will provide you with a secure file transfer link for your submission to the Office of the Chief Counsel.**

Requests for confidential treatment are governed by Part 512. A current version of this regulation is available on the internet at <http://www.ecfr.gov> by selecting Title 49 "Transportation," selecting "Parts 500 – 599" and then selecting Part 512 "Confidential Business Information."

### How to request confidential treatment:

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. If you claim that any of the information or documents provided in your response constitutes confidential business information within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, you must request a secure file transfer link from the ODI contact listed in your Information Request. ODI will copy a representative from the Office of the Chief Counsel on the secure file transfer link for your request for confidential treatment. You must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with Part 512, to the Office of the Chief Counsel. Do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters.

Your request must include a request letter that contains supporting information, pursuant to Part 512.8. Your request must also include a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[ ]."

You are also required to submit one redacted "public version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted "public version" should include redactions of any information for which you are seeking confidential treatment (i.e., the only information that should be unredacted is information for which you are **not** seeking confidential treatment).

For questions about a request for confidential treatment, please contact Dan Rabinovitz in the Office of the Chief Counsel at [Daniel.Rabinovitz@dot.gov](mailto:Daniel.Rabinovitz@dot.gov) or (202)366-8534.