Safety regulator wants info on Tesla’s FSD beta, ‘safety score’ evaluation



The National Highway Traffic Safety Administration wants to know why Tesla didn’t issue a recall for Autopilot after it became obvious the driver assistance system had a problem “seeing” parked emergency vehicles. NHTSA is also asking Tesla for more information about the growing public beta test of its incomplete Full Self-Driving software, the recently launched “Safety Score” evaluation process for entering the program, and the non-disclosure agreements Tesla was making participants sign up until this week.

The safety regulator’s concerns were outlined in two letters published Wednesday – the latest in a series of recent moves by NHTSA that show it’s paying far more serious attention to Tesla now than it ever did during the Trump administration. In March, it disclosed that it had 23 active investigations into crashes that may have involved Autopilot.

The concern with Autopilot’s inability to “see” emergency

vehicles stretches back years. NHTSA opened a formal probe into the problem in August and said it had logged at least 11 incidents since 2018 where drivers crashed into parked emergency vehicles — including 17 injuries and one fatality.

The agency wants a lot of info about Tesla's decision to ship a software fix without a recall

Tesla shipped a software update to its cars meant to fix the issue with its driver assistance system in September. But NHTSA wants to know why Tesla didn't go through the formal recall process with this update, potentially setting up a protracted fight over whether over-the-air updates that can materially change how cars operate should be subjected to the government's stringent automotive safety rules.

"As Tesla is aware, the [Vehicle] Safety Act imposes an obligation on manufacturers of motor vehicles and motor vehicle equipment to initiate a recall by notifying NHTSA when they determine vehicles or equipment they produced contain defects related to motor vehicle safety or do not comply with an applicable motor vehicle safety standard," the agency writes in one of the letters.

NHTSA's Office of Defects Division is specifically asking Tesla for an internal timeline of the decision to deploy the September software update, any internal investigations or studies the company performed into the matter, and specific dates when the software went out to customer vehicles. The division also wants Tesla to provide a list of any "field incidents or other events that motivated the release" of the software, presumably to see if there are related crashes it's not aware of.

Lastly, the agency wants Tesla to provide any "technical and/or legal basis" for not filing for a recall.

This is one of the first times the government safety agency has directly questioned Tesla about what critics of the

company say is a pattern of actively dodging recalls. In particular, the company has performed a number of mechanical fixes on cars over the years that were labeled as “goodwill” repairs instead of doing them under warranty — which some argue is an effort to evade issuing recalls. Earlier this year, Tesla only issued a recall for failing touchscreen displays on more than 100,000 of its cars after much public pressure from NHTSA.

Regulators want to know more about the “Full Self-Driving” beta test, which Tesla is expanding

Tesla recently started expanding access to the beta version of its so-called Full Self-Driving software, which does not yet make the company’s cars anywhere near fully autonomous. In late September, it shipped another software update that allowed owners to request participation in the beta test. At the same time, Tesla said it would start using a new “Safety Score” feature to evaluate owners’ driving habits and that it only allows the best-performing ones into the Full Self-Driving beta.

NHTSA wants to know a lot more about all of this. In the same letter, it asks Tesla to provide “criteria and timeline for allowing access to customers who have requested consideration in Tesla’s FSD Beta Request process” and tells the company to include “detailed descriptions of all selection criteria and copies of supporting documents.” It also wants a list of people who have opted to participate in the beta, as well as the vehicle identification number of any car with the software, the date when the software was installed on said car, and whether the owner is an employee of Tesla.

Tesla’s response to all of those requests for information is due November 1st.

The second letter is also focused on an aspect of the Full Self-Driving beta, though it was sent by NHTSA’s chief counsel, Ann Carlson. She wants to know more about the non-

disclosure agreements Tesla was making owners sign in exchange for access to the beta software.

When parts of that NDA were first published by *Vice* in late September, it was revealed that Tesla was asking owners to "consider sharing fewer videos" of the software performing poorly out of fear that those clips would be taken out of context. "[T]here are a lot of people that want Tesla to fail; Don't let them mischaracterize your feedback and media posts," the document read. (Tesla CEO Elon Musk has said, on a number of occasions, that he believes "negative news" about his company's driver assistance systems makes roads less safe because it discourages people from using Autopilot.)

Just one day after that story published, Tesla CEO Elon Musk was asked about the NDAs at the 2021 Code Conference. He said that owners were sharing "a lot of videos" in spite of the agreement because "people don't seem to listen to me."

"I don't know why there's an NDA," he added, saying "we probably don't need it." Tesla seems to have dropped the NDA in the most recent version of the Full Self-Driving beta software.

In Carlson's letter, which is dated October 12th, she writes that the agency is concerned that Tesla is hampering one of the agency's best resources for keeping tabs on automakers: their customers.

NHTSA is probing Tesla's use of NDAs, though Musk said they "don't need them"

"Given that NHTSA relies on reports from consumers as an important source of information in evaluating potential safety defects, any agreement that may prevent or dissuade participants in the early access beta release program from reporting safety concerns to NHTSA is unacceptable," she writes. "Moreover, even limitations on sharing certain information publicly adversely impacts NHTSA's ability to

obtain information relevant to safety.”

While NHTSA has turned up the heat on Tesla since Joe Biden took office, it’s also increased its scrutiny of driver assistance systems across the board. In June, the agency announced a new rule requiring automakers and transportation companies to quickly report crashes involving partially or fully autonomous systems. In September, it requested information from 12 other automakers about their driver assistance systems as part of the probe into Tesla’s problem with emergency vehicles.

https://www.theverge.com/2021/10/13/22724171/nhtsa-tesla-letters-fsd-beta-autopilot-recall-emergency-vehicles