

From: Solomon Hasan <hsolomon@iamaw.org>
Sent: Wed, 28 Apr 2021 09:44:44 -0700
To: Sabathier, Robbie K
Subject: Re: Elon Musk's War on Regulators

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Sent from my iPhone

On Apr 28, 2021, at 12:43 PM, Sabathier, Robbie K <Robbie.Sabathier@ulalaunch.com> wrote:

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Hasan
For the Biden folks.

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<https://www.wsj.com/articles/elon-musk-tesla-spacex-regulators-crash-11619624227?mod=e2tw>
by Susan Pulliam, Rebecca Elliott and Ben Foldy

The Tesla and SpaceX chief courts conflict with an alphabet soup of government agencies—and generally gets away with it

He's become one of the world's most successful entrepreneurs by reinventing industries from [electric cars](#) to rockets. Along the way, he's also rewritten the rules of engagement with U.S. regulators.

[Elon Musk](#) has emerged a winner in a series of run-ins with a range of regulatory agencies that have watched as he sidestepped rules or ignored enforcement attempts. He has overmatched an alphabet-soup of agencies that oversee financial markets and safety in the workplace, on highways and in space flight.

Most chief executives try to avoid regulators—or at least stay in their good graces. Many accused of overstepping have at least paid fines or [agreed to make improvements](#).

Mr. Musk, revered by some investors for his iconoclastic approach, has taken a different tack on his way to [becoming one of the richest men in the world](#), not letting regulations hinder his goals to revolutionize transportation with [Tesla Inc.'s TSLA -1.26%](#) electric cars or colonize Mars using SpaceX rockets. Federal agencies say he's breaking the rules and putting people in danger. Mr. Musk says they're holding back progress.

The National Transportation Safety Board determined that Tesla and a key regulator, the National Highway Traffic Safety Administration, [are putting drivers at risk by failing to implement the NTSB's recommendations to prevent misuse of the company's advanced driver-assistance system](#). Both agencies are investigating [a recent fatal crash involving a Tesla in Texas](#).

The Federal Aviation Administration [criticized SpaceX for launching a rocket in December without a proper FAA license](#). Mr. Musk ridiculed the FAA space division in a [tweet](#) as “fundamentally broken.”

Mr. Musk stands out even when measured against other Silicon Valley titans, who have long bridled at regulators. Rather than [engaging in a give-and-take with government authorities](#), Mr. Musk's default response includes making public, sometimes crude, remarks via [Twitter](#) disparaging them.

After the Securities and Exchange Commission asked for information on whether Tesla was monitoring Mr. Musk's public messages—as required under [an amendment to a 2018 consent decree](#)—the billionaire last summer tweeted an apparent reference to a sex act: “SEC, three letter acronym, middle word is Elon's.”

When asked to comment on the specifics of this article, Mr. Musk replied with a “poop” emoji. Asked to elaborate, Mr. Musk declined to provide any input on his interactions with federal agencies or his view toward regulation. In a tweet Tuesday, Mr. Musk said he agrees with regulators “99.9% of the time.” He added that when they disagree, it “is almost always due to new technologies that past regulations didn't anticipate.”

Tesla and SpaceX didn't respond to requests for comment.

NHTSA said it is “closely evaluating potential next steps to ensure that drivers have access to the most effective measures to ensure their safety, including the understanding that they are fully responsible for the operation of the vehicle.” An FAA spokesman said SpaceX has taken “corrective actions” that enhance public safety since the December launch. An SEC spokesman declined to comment.

Rather than encouraging Mr. Musk to conform, some shareholders revel in his behavior. Mr. Musk's fans “see him as a freedom fighter and they cheer him on,” says Nathan Weiss, an independent research analyst who has long followed Tesla.

Space Exploration Technologies Corp., or SpaceX, has already designed rockets that are successfully in service taking cargo and people to space. Just last week, a SpaceX rocket [brought four astronauts to the space station](#), for the first time employing a pre-used capsule and rocket. Earlier this month, [NASA awarded SpaceX a \\$2.89 billion contract](#) to build a lunar lander for moon missions.

SpaceX has run into conflict with regulators as it tests its new large rocket, the Starship, a reusable transportation system that can carry crew and cargo to Mars, according to the company's website.

Tensions built as a December 9 launch date approached. Reflecting the reality that early test flights often go awry, Mr. Musk tweeted on Dec. 7 that the launch had just a one-in-three chance of complete success. For the FAA, the acid test was whether a possible explosion would pose a threat to surrounding communities.

Atmospheric conditions such as temperature, wind direction and clouds can affect the distance shock waves travel in an explosion, space aviation experts say. The FAA calculated that the launch might exceed its threshold for risk of injuries to the public. SpaceX presented the FAA with its own risk analysis. The FAA rejected SpaceX's analysis and denied a request for a waiver of the agency's own safety criteria, according to an FAA spokesman.

SpaceX launched the rocket anyway. The vehicle, dubbed SN8, soared miles into the air before returning to the launchpad nearly seven minutes later, exploding into a fireball on impact. No one was hurt and there were no reports of property damage.

After the FAA delayed a January test launch, Mr. Musk accused the agency of holding back progress and argued that its regulations were outdated. “Their rules are meant for a handful of expendable launches per year from a few government facilities,” he tweeted on January 28. “Under those rules, humanity will never get to Mars.”

On March 12, FAA Administrator Stephen Dickson called Mr. Musk to remonstrate, stressing that he is required to follow FAA rules, according to the FAA spokesman. According to FAA briefings before three Congressional panels, SpaceX has changed its prelaunch procedures to avoid a repeat of another unlicensed launch. It is now required to have an FAA inspector on site, rather than observing remotely, during launches, the FAA said.

On March 21, after hearing input from commercial space companies including SpaceX, the FAA streamlined its licensing requirements.

Since the December flight, three other SpaceX Starship rockets launched under FAA license in Boca Chica. Each exploded upon returning to the launch pad.

The National Labor Relations Board ruled in March that Tesla had violated U.S. labor law by stymieing unionization and ordered Mr. Musk to delete a tweet discouraging employees from unionizing. Tesla this month appealed the decision, saying the NLRB’s ruling was “contrary to law.”

Mr. Musk’s tweet remains online. The NLRB declined to comment.

Tesla rebuffed inspections from state Occupational Safety and Health Administration officials seeking access to its Gigafactory in Nevada, where the company manufactures battery packs for its cars with partner [Panasonic Corp.](#)

The auto maker stymied Nevada OSHA for nearly three months in 2019 as the agency attempted to fully inspect the battery factory, one of the area’s largest workplaces with around 7,800 employees, according to records and correspondence reviewed by The Wall Street Journal.

After an employee lost a finger and another suffered lacerations on the same day, the agency ordered Tesla to obtain an outside assessment of its machinery. Tesla missed a deadline to provide a copy to OSHA, and Jess Lankford, the state agency’s chief administrative officer, ordered a comprehensive inspection in March 2019.

OSHA inspectors wrote they were unable to recommend citations for nine potential hazards they observed while initially attempting to inspect the plant, because Tesla refused to allow them to interview employees to ascertain whether the company had known about the issues.

Upon their return the next day, the inspectors weren’t allowed to continue their work, according to their reports. Tesla lawyer Yesenia Villaseñor said the agency lacked a legal justification for the inspection and it was “on hold” until that issue was resolved, according to inspector reports and email correspondence.

When asked to sign a form stating that Tesla was denying entry, company representatives refused, one inspector noted in his report.

A Nevada OSHA spokeswoman said most employers don’t interact like Tesla, and instead grant access to inspectors when asked. Employers are legally required to comply with OSHA requests for inspections, interviews and documents, she said. The Reno Gazette-Journal first cited Nevada OSHA’s inspection difficulties.

Mr. Lankford declined to comment beyond OSHA's statement. Ms. Villaseñor didn't respond to requests for comment.

After a series of standoffs over the next few weeks, Nevada OSHA obtained an administrative warrant from a judge on May 20 to perform a comprehensive inspection.

The next morning, an agency supervisor brought the warrant and a sheriff's deputy along to inspect the plant, according to the sheriff's body camera footage reviewed by the Journal.

As they waited for a Tesla representative to meet them at the gate, the deputy said he was sympathetic to the OSHA inspectors, the camera footage shows.

"They're difficult—they're the same way with us," the deputy said.

Despite the warrant, a Tesla manager again denied entry.

Tesla met with state political officials including the Nevada attorney general, according to Ray Fierro, a former official with Nevada's Department of Business and Industry, who attended the meeting.

Officials agreed to let Tesla limit the scope of the inspection while reporting to the judge that OSHA had the cooperation it needed, Mr. Fierro said. The inspections later yielded three citations, two for refusing to provide documents like injury records and one for an unsafe fall hazard. Again, inspectors noted that Tesla didn't allow interviews of employees that might have led to other citations.

OSHA still hasn't performed a comprehensive inspection of the plant, the spokeswoman said.

One of the higher-profile issues facing Tesla today involves its advanced-driver assistance features. Dubbed Autopilot, the system has drawn repeated regulatory scrutiny after being linked to a series of accidents.

In some ways, this reflects an emerging area of safety oversight that lacks clear regulatory rules, according to Kris Poland, the NTSB's deputy director of highway safety, who gave credit to Tesla engineers for sharing data and technical expertise when requested.

After a fatal 2016 crash in Florida, the NTSB found that the company's technology contributed to the accident by allowing the driver to go long periods without his hands on the wheel. (NHTSA, for its part, said Tesla had tried to design a system that would keep drivers from misusing Autopilot.)

The NTSB urged six auto makers to clamp down on how drivers could use their driver-assistance systems. Every company but Tesla responded in a way that satisfied the agency, outlining steps they took to reduce misuse of the systems. By not preventing Autopilot from being used in situations it wasn't designed for, Tesla created "a system designed to fail because of the foreseeable misuse of the system," the NTSB said.

This month, after the fatal Texas crash, local authorities said they found two men in the vehicle, but neither was in the driver's seat.

The crash left questions about whether or how the vehicle could have been operating without anyone behind the wheel. A Tesla executive said Monday that someone likely was in the driver's seat at the time of the crash; the incident remains under investigation. Mr. Musk has tweeted that early data indicated that Autopilot wasn't enabled.

After a 2018 crash that was being investigated by the NTSB, Tesla published initial data on the accident and said on its website that drivers with its Autopilot hardware were 3.7 times less likely

to be involved in fatal crashes. Auto safety experts and statisticians have questioned Tesla's claims.

After the post, NTSB Chairman Robert Sumwalt called Mr. Musk asking the company to stop divulging information about the investigation, according to an NTSB letter to Tesla. When Tesla again shared information publicly, Mr. Sumwalt called Mr. Musk again, telling him he was revoking Tesla's status as a partner in the investigation.

Mr. Musk hung up on him, Mr. Sumwalt said later in a speech. Responding to criticism, Tesla said the company chose to withdraw from the investigation and that the agency was "more concerned with press headlines than actually promoting safety."

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