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Docket Management Facility, M-30
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building, Room W12-140
Washington, DC 20590-0001

RE: Framework for Automated Driving System Safety [Docket No. NHTSA-2020-0106; RIN 2127-AM15]

The American Association of Motor Vehicle Administrators (AAMVA) welcomes the opportunity to comment on the development of a framework for Automated Driving System (ADS) safety. Throughout its response to this docket, AAMVA references comments provided via previous dockets on similar automated driving issues. AAMVA refers NHTSA to its previously submitted comments on Automated Driving Systems or ADS-related issues as follows:

- AAMVA Comments on Removing Regulatory Barriers for Vehicles with Automated Driving Systems
- AAMVA Comments on Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles
- AAMVA Comments on Nuro AV Exemption Petition
- AAMVA Comments on General Motors AV Exemption Petition
- AAMVA Comments on DOT AV 3.0
- AAMVA Comments on NHTSA Driving Automation Pilot Program
- AAMVA Comments on FMCSA Regulatory Barriers to ADS CMVs
- AAMVA Comments on Removing Regulatory Barriers to ADS
- AAMVA Comments on FHWA Infrastructure Requirements for ADSs
- AAMVA Comments on Automated Driving Systems - A Vision for Safety 2.0
- AAMVA Comments on Automated Vehicle Voluntary Self-Assessments
- AAMVA Comments on Federal Automated Vehicles Policy

In conjunction with several state-based interests, AAMVA has also developed common response to some of the global issues raised through this ANPRM. These collective comments focus not on the specifics offered in the proposed rule, but rather on clarifying our view of the federal and non-federal authorities concerning motor vehicle performance. All AAMVA comments, both previously submitted and following hereafter, reinforce that maintaining the current federal and non-federal authorities with respect to motor vehicle performance is of paramount importance in ensuring the appropriate safety oversight structure for motor vehicles remain intact.

A. Questions About a Safety Framework

Question 1. Describe your conception of a Federal safety framework for ADS that encompasses the process of engineering measures described in this document and explain your rationale for its design.

On page 78509 of the ANPRM, NHTSA states:

"Rather than elaborating and prescribing by rule specific design characteristics or other technical requirements for ADS, NHTSA envisions that a framework approach to safety for ADS developers would use performance-oriented approaches and metrics that would accommodate the design flexibility needed to ensure that manufacturers can pursue safety innovations and novel designs in these new technologies. This framework *could involve a range of action by NHTSA,* including guidance documents addressing best industry practices, providing information to consumers, and describing different approaches to research and summarizing the results of research, as well as more formal regulation, from rules requiring reporting and disclosure of information to the adoption of ADS-specific FMVSS."

Performance-based safety standards and guidance relationships will be an important consideration for NHTSA as it develops its framework. While AAMVA defers to NHTSA on what it envisions on the best path forward, "how" NHTSA chooses to describe safety performance will be integral to the success of development and consider how the performance-based model impacts established relationships for oversight. AAMVA provides separate comments regarding the application of testing methodologies and their differentiation from established FMVSS [NHTSA-2020-0119] in the appropriate docket. While AAMVA supports the flexibility a performance-based model external to the FMVSS provides to innovative safety design, it will be critical to ensure performance-based standards are developed in such a way that ensures the same safety assurances are being replicated for all production vehicles so that fleet integration provides for the maximum safety assurances possible.

AAMVA recognizes that it does not possess the appropriate technical expertise to establish these standards, but we do emphasize the need for accountability in the absence of a uniformly applied standard. Whether this be independent, third-party evaluation of vehicles as part of certification, the submission of safety data prior to deployment, or simple attestation that holds a manufacturer accountable for documented assurances the vehicle meets all applicable FMVSS, those roles may be important in an ADS-specific environment.

AAMVA has contemplated some of the same issues NHTSA describes through its "Safe Testing and Deployment of Vehicles Equipped with Automated Driving Systems Guidelines, Edition 2." Section 4.8 of this document deals with jurisdictional approval of ADS-equipped vehicles in the absence of a national regulatory structure and describes examples of approaches jurisdictions have taken. It is important to note that AAMVA explicitly states in this section that, "the working group recommends jurisdictions neither put themselves in the position of approving ADS nor imposing a 'skills test' on the ADS or its manufacturer at this time. Doing so could create inconsistencies between jurisdictions unless a national test standard were developed. An ADS-equipped vehicle for sale or use on public roads should follow the existing self-certification process used for other vehicle equipment pending further oversight from the federal government."

NHTSA requests comment on whether ADS should be something considered under the current FMVSS model. AAMVA understands that application of FMVSS to evolving technology can be both cumbersome and time consuming given the rapid development of ADS. The benefit of having performance-based standards lies in the ability to ensure a uniform standard is met across the board, and that manufacturers are meeting that standard. It will certainly take longer to develop and apply those standards to a new class of ADS-equipped vehicles, but there is comfort in the consistency of the

standard being applied universally. ADS-specific FMVSS may also be developed in such a way that they are less reliant on "how" the performance-based metric of the standard is met, and more on an assurance that the safety goals of the standard are met regardless of the technology that accomplishes the standard.

Finally, the benefit of applying FMVSS ensures that no matter how vehicle performance may be altered via over-the-air updates; the same federal standard regarding safety performance remains intact in the post-production environment. This ensures that there is not more than one standard applying to vehicle functionality. AAMVA understands that some of the concepts NHTSA is pursuing through this ANPRM are not mature enough to come to a clear conclusion one way or another. While we provide comment based on experience and best assurances of safety, we understand that from a technical and design standpoint – NHTSA and its certified manufacturers are best equipped to describe why the current FMVSS structure is untenable.

Question 2. In consideration of optimum use of NHTSA's resources, on which aspects of a manufacturer's comprehensive demonstration of the safety of its ADS should the Agency place a priority and focus on its monitoring and safety oversight efforts and why?

AAMVA does not have insight into NHTSA's current resources and does not have a clear view on where those resources are lacking. The ability to translate between the software intentions of the vehicle and how the vehicle actually executes safety-critical functions will be a priority in protecting the public. Monitoring the performance of vehicles that may be at varying levels of automation will also be a critical component in ensuring that vehicles are being deployed in a safe manner. AAMVA emphasizes that driver convenience should take a back seat to driver safety where possible. Any technology that requires a human in the vehicle, and has complementary self-driving features, should retain a capability level equitable to current driver safety.

Question 3. How would your conception of such a framework ensure that manufacturers assess and assure each core element of safety effectively?

First and foremost, compliance with whatever path NHTSA chooses in terms of ADS oversight should not be voluntary. Voluntary compliance with oversight has not equated to appropriate levels of safety assurance. AAMVA also refers NHTSA to past comment where we discussed the need for clear accountability chains between the vehicle manufacturer and NHTSA. This becomes especially important as numerous individual companies contribute to individual performance safety functions of a single vehicle. As the vehicles become more complex, it will be critical to ensure that a single entity is accountable for the final production model of the vehicle – even if numerous technology components are integrated into that vehicle's final design. Having clear linkage between the entity asserting vehicle safety (as a whole) and the body responsible for oversight will ensure appropriate due diligence is being allocated to the appropriate contributing manufacturers.

Additionally, AAMVA summarizes its recommendations for manufacturers and other entities for the safe testing and deployment of automated driving system-equipped vehicles in Appendix B (pages 95-98) of its "Safe Testing and Deployment of Vehicles Equipped with Automated Driving Systems Guidelines, Edition 2." This includes all recommendations with a "MOE" prefix.

AAMVA further recommends that submission and documentation of first responder interaction plans for all manufacturers be a mandatory aspect of NHTSA's ADS oversight. AAMVA details all the considerations of first responder interaction plans in Section 6.6 (page 61) of its "Safe Testing and Deployment of Vehicles Equipped with Automated Driving Systems Guidelines, Edition 2." This includes recommendations for manufacturers.

Question 4. How would your framework assist NHTSA in engaging with ADS development in a manner that helps address safety, but without unnecessarily hampering innovation?

AAMVA certainly understands the complexity of balancing safety oversight with the need to encourage innovation. As a safety-first organization, our primary goal is to save lives. We understand the promise of ADS, but also realize that any framework established must consider the potential for bad actors or entities not performing satisfactory quality assurance to take advantage of those safety assurances that are not specifically prescribed. AAMVA has pointed to methods that may meet both the challenge of safety and the need to prevent bad actors. Those recommendations include clear documentation on safety related measures. Sole-source accountability. The prospect of third-party independent evaluation of safety functionalities of the vehicle. Attestation to, and general descriptions of how, performance-based metrics of the vehicle are being met. Supplementary data provision as a condition of certification where FMVSS cannot be met. Regular reporting on safety metrics.

Question 5. How could the Agency best assess whether each manufacturer had adequately demonstrated the extent of its ADS' ability to meet each prioritized element of safety?

AAMVA would couple its response here with answers supplied in question 4 above, and further refer NHTSA to its previously submitted comment on numerous previous dockets, including:

- **AAMVA Comments on Removing Regulatory Barriers for Vehicles with Automated Driving Systems**
- **AAMVA Comments on Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles**
- **AAMVA Comments on Nuro AV Exemption Petition**
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Question 6. Do you agree or disagree with the core elements (~~i.e.~~i.e., "sensing," "perception," "planning," and "control") described in this document? Please explain why.

> "NHTSA believes there are four primary functions of the ADS that should be the focus of the Agency's attention. First, how the ADS receives information about its environment through sensors ("sensing"). Second, how the ADS detects and categorizes other road users (vehicles, motorcycles, pedestrians, etc.), infrastructure (traffic signs, signals, etc.), and conditions (weather events, road construction, etc.) ("perception"). Third, how the ADS analyzes the situation, plans the route it will take on the way to its intended destination, and makes

> decisions on how to respond appropriately to the road users, infrastructure, and conditions detected and categorized ("planning"). Fourth, how the ADS executes the driving functions necessary to carry out that plan ("control") through interaction with other parts of the vehicle. While other elements of ADS safety are discussed throughout this document, these four primary functions serve as the core elements NHTSA is considering."

AAMVA generally supports the distinctions NHTSA has described for driving functions that contribute to the dynamic driving task. In terms of vehicle "performance" AAMVA will be most concerned with the functions attributed to the control aspects of the vehicle. AAMVA further notes that while these are extremely structural distinctions to make for fully autonomous vehicles, there are aspects of the core elements that may apply slightly differently depending on the levels of human engagement. For instance, if the planning or perception aspects require human assistance, the expectations on control may modify depending on whether ADS functionality of the vehicle is engaged. Additionally, while the core elements seemingly encompass all elements of the detection and response aspects of driving, the extent to which those functions are subject to inspection or verification against submission may be less conspicuous.

Question 7. Can you suggest any other core element(s) that NHTSA should consider in developing a safety framework for ADS? Please provide the basis for your suggestion.

While the concepts proposed above are broad enough to cover most of the dynamic driving task, it may be important for NHTSA to consider which components of the driving task may subject the ADS to vehicle "learning" or "artificial intelligence" functionalities that may change over time. This may be important in terms of understanding not only the execution of pre-programmed response, but also whether the vehicle has the capacity to learn from prior events and modify behaviors. Further, whether any learned behaviors of the vehicle could be communicated and transmitted to manufacturers for consideration in improved design. And, if constructed in such a way as to share non-proprietary information, whether there are learning data points that could be shared in a safety oversight capacity.

AAMVA would also again reference its prior comment regarding the essential inclusion of first responder interaction plans. While this was not included in the core elements of the driving task, the beginning to end process of "disruption response" actions for a vehicle that is not operating as desired or expected may also be something that should be included in (or separate from) the "control" designation.

Question 8. At this early point in the development of ADS, how should NHTSA determine whether regulation is actually needed versus theoretically desirable? Can it be done effectively at this early stage and would it yield a safety outcome outweighing the associated risk of delaying or distorting paths of technological development in ways that might result in foregone safety benefits and/or increased costs?

Regulation is absolutely necessary. Already there are instances of market production vehicles making ADS related claims that may not be considered "uniform" or valid representations of true vehicle functionality. Regulation serves as the cornerstone of safety, and experience dictates that oversight authorities are unable to rely on individual actors to serve the public's best interest. AAMVA

understands that NHTSA's question originates from the perspective that regulations will serve as an impediment, but that may not necessarily be true if the process avoids being overly prescriptive in the development of early regulation and evolves through an iterative process. Past regulations were developed much in this same manner, where at outset, the determination on which aspects of the new technology required regulation, then after application, those regulations were refined to serve the public's best interest. While AAMVA has less insight into the cost of technology development, there is clear evidence that from a safety perspective, the economic impact of motor vehicle crashes and fatalities are significant. AAMVA supports the "Road to Zero" mindset that one death is too many, and therefore points to the need for a regulatory structure that ensures as human drivers are phased out, the systems that replace those drivers are regulated in such a way as to ensure that transfer represents an increased level of safety.

Question 9. If NHTSA were to develop standards before an ADS equipped vehicle or an ADS that the Agency could test is widely available, how could NHTSA validate the appropriateness of its standards? How would such a standard impact future ADS development and design? How would such standards be consistent with NHTSA's legal obligations?

AAMVA recognizes that the ability to test something that does not exist creates serious challenges. Through separate comment AAMVA has touched on these questions (NHTSA Notice Regarding the Applicability of NHTSA FMVSS Test Procedures to Certifying Manufacturers – Docket No. NHTSA-2020-0119). AAMVA suggests that at some point, a vehicle will be fully designed, and the application of regulations could and should start at the time a manufacturer is either ready to certify the vehicle as public-ready, or the vehicle is complete and ready for introduction or sale. Ultimately, AAMVA would defer to NHTSA and SAE to determine the best path forward for non-production ready models or theoretical function.

Additionally, in order to support jurisdictions that are testing and evaluating vehicles that admittedly may not be mature or market-ready, it would be valuable if NHTSA in the near term could clarify how and when it would grant exemptions to such developmental vehicles from existing FMVSS equipment and control requirements, even if it does not immediately address more complete FMVSS updates.

Question 10. Which safety standards would be considered the most effective as improving safety and consumer confidence and should therefore be given priority over other possible standards? What about other administrative mechanisms available to NHTSA?

Historically, all regulations have worked in concert to provide the best possible assurances of safety, including regulations governing the application of safety standards. As mentioned above, and in other dockets, general application may serve initially with additional standards and regulations refining the safety environment. The argument against prioritizing standards would be that if any vehicle function or design element is worth standardizing, then they represent a critical safety component of the vehicle. If we look back on traditional standards applying to human driven vehicles, they are important enough to represent safety critical features for assuring public safety. All vehicle functions that have applicable standards need to work in unison, even if they are singular vehicle functions or components. For this reason, AAMVA suggests that standardized safety features must be equitably considered.

In terms of administrative mechanisms, it may not be that past application of standards fits for all aspects of an ADS. NHTSA describes other administrative safety mechanisms available to NHTSA, such as self-assessment, new car assessment, operational guidance, etc. NHTSA is most likely the best to leverage these administrative tools where they see fit, but AAMVA cautions against recent utilization of these tools to establish a voluntarily compliant ADS ecosystem. AAMVA would prefer that the result of using any of these administrative tools is the development of requirements rather than suggestions. As AAMVA has referenced in earlier comment, experience proves that voluntary compliance leads to a lack of uniform adoption of critical safety elements, a lack of availability of consistent comparative data, a lack of consistency in safety expectations, and a lack of enforcement capability. While a standard may not be necessary in all instances, accountability through attestation, through independent evaluation, or through data submission in lieu of a standard may serve. And all of this may be accomplished through one, or a combination, of the administrative tools NHTSA lists. But accountability and preservation of recall authority remain essential components of NHTSA plan.

Question 11. What rule-based and statistical methodologies are best suited for assessing the extent to which an ADS meets the core functions of ADS safety performance? Please explain the basis for your answers.

Rule-based assessment involves development of definitions on how a comprehensive set of rules meets the requirements of the rule(s) and therefore meets an established level of safety. This level of safety is usually something that the vehicles can be empirically tested against. A statistical approach would track the performance of the vehicle over millions of miles and/or real-world operation, then extrapolate data points to make projections on probability of safe operation.

AAMVA again refers NHTSA to its comments submitted via application of testing methodologies to FMVSS. AAMVA defers which method is best to NHTSA as the states have less visibility into the application of statistical models that may not yet be operational to a level of significance.

Question 12. What types of quanta of evidence would be necessary for reliable demonstrations of the level of performance achieved for the core elements of ADS safety performance?

AAMVA defers to NHTSA expertise to make this determination.

Question 13. What types and amount of argumentation would be necessary for reliable and persuasive demonstration of the level of performance achieved for the core functions of ADS safety performance?

The term “reliable demonstration” is hard to quantify when you are talking about human life. In the truest safety terminology, that may equate to, “the technology never fails” but making those types of arguments in a reliable and persuasive demonstration is difficult. Further, tying individual system performance to complete vehicle performance may also be complex. AAMVA defers this type of engineering decisions to those that know it best – NHTSA and the manufacturers.

Question 14. What additional research would best support the creation of a safety framework? In what sequence should the additional research be conducted and why? What tools are necessary to perform such research?

AAMVA is not a research organization and defers comment to those more qualified.

Question 15. Discuss the administrative mechanisms described in this document in terms of how well they meet the selection criteria in this document.

AAMVA refers NHTSA to its answers in question 10 above. AAMVA notes that voluntary safety assessment as a sole mechanism is not tenable. AAMVA has previously commented on the need for requirements to be non-voluntary. Further, an assessment is only worthwhile if there are accompanying levers for correction. That way if the assessment falls short, or a standard is not sufficient, there are correcting mechanisms on the other side of that assessment to make the required improvements. If nothing is done to correct the shortcomings of an assessment, then the assessment on its own holds little value.

NHTSA also proposes using guidance to encourage the "development of a safety case by manufacturers". As used in this document, a safety case is "a structured argument, supported by a body of evidence that provides a compelling, comprehensible, and valid case that a system is safe for a given application in a given operating environment." AAMVA believes this is a reasonable mechanism that can be tailored to a specific use-case scenario. The issue is ensuring the demonstration is narrowly applied to the use case. However, as a non-standard, it may encourage development but does not require a specific standard. Further, should manufacturers disclose to NHTSA its safety case and demonstrate how well it adheres to its own safety metrics, it could provide a good example of transparency being utilized to affirm how industry is meeting the requirements of NHTSA's core elements.

AAMVA also supports the use of additional general testing, such as closed test courses. While a test course test may be inadequate on its own, it may at least be used as consumer choice determination.

AAMVA again reiterates the need to place documented requirements on whatever administrative mechanism they so choose. Experience has shown that requirements are much more effective at encouraging conformance.

AAMVA approves of all the administrative solutions put forward in this section (pages 78066-78068). These need not be only one or the other, but the potential for combining them for maximum effect, and making them requirements all hold promise.

Question 16. Of the administrative mechanisms described in this document, which single mechanism or combination of mechanisms would best enable the Agency to carry out its safety mission and why? If you believe that any of the mechanisms described in this document should not be considered, please explain why.

As indicated above, utilizing them all would be optimal, but AAMVA defers to NHTSA's expertise to determine what accomplishes the greatest level of safety.

Question 17. Which mechanisms could be implemented in the near term or are the easiest and quickest to implement and why?

Each administrative mechanism has its own pros and cons, but proper assessment requires an assessment team and the submission of either documentation, a demonstration, a safety case, or a standard. All these evaluations will take time, and should take time, when making determinations about the future of safety.

Question 18. What mechanisms might not be implementable until the mid or long term but might be a logical next step to those mechanisms that could be implemented in the near term and why?

AAMVA refers to its answers for question 17.

Question 19. What additional mechanisms should be considered, and why?

AAMVA references considerations included in separate docket [NHTSA-2020-0119] on the application of testing methods to FMVSS. There AAMVA discusses the role third-party evaluation of technologies may serve. AAMVA also references its "Safe Testing and Deployment of Vehicles Equipped with Automated Driving Systems Guidelines, Edition 2." Finally, AAMVA again reiterates the need to require first responder interaction plans for all ADS-equipped vehicles. Recommendations concerning this begin on page 61 of AAMVA's above referenced guidelines.

Question 20. What are the pros and cons of incorporating the elements of the framework in new FMVSS or alternative compliance pathways?

FMVSS are more structured, more formalized, and have the backing of years of development to create a holistic level of safety. They are more uniform and are more appliable across designs. Unfortunately, they take a long time to develop, and technology in the ADS arena will likely outpace them quickly enough to make the standard inapplicable. Administrative mechanisms referenced above are likely more flexible and easily changed as they do not represent a formal standard. This allows them to be applied more generally to a broader swath of technology. They can also be utilized in such a way as to be iterative and may be accomplished in a shorter term without being universal and permanent. While compliance levels are more easily associated with compliance against a standard, there is the possibility of developing administrative mechanisms that do not carry the appropriate requirements to encourage conformance or allow for appropriate enforcement.

Question 21. Should NHTSA consider an alternative regulatory path with a parallel path for compliance verification testing, that could allow for flexible demonstrations of competence with respect to the core functions of ADS safety performance? If so, what are the pros and cons of such alternative regulatory path? What are the pros and cons of an alternative pathway that would allow a vehicle to comply with either applicable FMVSS or with novel demonstrations, or a combination of both, as is appropriate for the vehicle design and its intended operation? Under what authority could such an approach be developed?

AAMVA refers NHTSA to its comments provided in question 20 and throughout this document. Further, AAMVA reiterates the difficulty in ensuring novel demonstrations are true representations of "intended design." NHTSA would also have to consider how it would monitor and enforce against instances where the scope of operation for a vehicle with a designed and restrictive ODD is operating outside the bounds of its intended design. There may also be complications where intended design, as

demonstrated, becomes altered via over the air updates or other additional modifications to the vehicle, essentially nulling the demonstration. And finally, AAMVA again reiterates that any administrative mechanism applied must be required, and not voluntary.

Question 22. Discuss how each element of the framework would interact with NHTSA's rulemaking, enforcement, and other authority under the Vehicle Safety Act.

AAMVA only reiterates that NHTSA should maintain current federal-state authority with respect to motor vehicle performance.

The regulation of motor vehicle safety, which includes the design, construction, and performance of a motor vehicle (in the traditional manner, as defined in Title 49 Sections 30102 and 30111) is, and should remain, a federal obligation. USDOT appears to confirm this position on page 6 of the ANPRM, where the document affirms the nexus of its authority to issue motor vehicle safety standards. However, state and local governments are the primary authority concerning operational safety, including regulating the operation of motor vehicles after such vehicles have been constructed, the operators of those motor vehicles, as well as establishing the rules of the road on how motor vehicles can be safely operated on public roadways. However, this federal authority related to the safety aspects of the design, construction, and performance of a motor vehicle does not include compliance with the traffic laws, rules of the road, or the operation of a motor vehicles of a state or political subdivision of a state.

This well-established structure for state-local and federal authority was endorsed by the Senate Committee on Commerce, Science and Transportation in its written report No. 115-187 in response to passage of S. 1885, the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act or the "AV START Act." In the committee's report, it noted: "The Committee understands that since it was first enacted in 1966, the National Traffic and Motor Vehicle Safety Act (Safety Act) has always contained a provision preempting States and political subdivisions of States from adopting or enforcing a standard 'applicable to the same aspect of performance of a motor vehicle' as a FMVSS. The term 'performance' in this section is intended to be consistent with NHTSA's authority under the Safety Act as it relates to vehicle or equipment performance and is not intended to be broadened beyond NHTSA's traditional interpretation, which excludes vehicle compliance with or the enforcement of State and local traffic laws."

Question 22. Discuss how each element of the framework would interact with NHTSA's rulemaking, enforcement, and other authority under the Vehicle Safety Act.

AAMVA defers to NHTSA's expertise.

Question 23. Discuss how each element of the framework would interact with Department of Transportation Rule concerning rulemaking, enforcement, and guidance.

AAMVA defers to NHTSA's expertise.

Question 24. If your comment supports the Agency taking actions that you believe may fall outside its existing rulemaking or enforcement authority, please explain your reasons for that belief and describe what additional authority may be needed.

AAMVA has no comment.

Question 25. If you believe that any of the administrative mechanisms described in this document falls outside the Agency's existing rulemaking or enforcement authority under the Vehicle Safety Act or Department of Transportation regulations, please explain the reasons for that belief.

AAMVA has no comment.

AAMVA thanks NHTSA for the opportunity to comment and looks forward to continued partnership as we embrace the potential for new technologies to bolster safety.

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