e **4910-59-P**

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0025; Notice 2]

Combi USA, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Combi USA (Combi), has determined that certain Combi USA BabyRide rear-facing child restraint systems manufactured between May 1, 2016, and August 31, 2019, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. Combi filed an original noncompliance report dated March 8, 2021, and later amended it on March 10, 2021, March 11, 2021, May 25, 2021, and July 22, 2021. Subsequently, Combi petitioned NHTSA on March 30, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Combi's petition.

FOR FURTHER INFORMATION CONTACT: Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, kelley.adamscampos@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview: Combi has determined that certain Combi USA BabyRide rear-facing child restraint systems manufactured between May 1, 2016, and August 31, 2019, do not fully comply with the requirements of paragraph S5.4.1.2(a) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213). Combi filed an original noncompliance report dated March 8, 2021, and later amended it on March 10, 2021, March 11, 2021, May 25, 2021, and July 22, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Combi subsequently petitioned NHTSA on March 30, 2021 for an exemption from the notification and remedy

requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Combi's petition was published with a 30-day public comment period, on April 22, 2021, in the **Federal Register** (86 FR 21435). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at https://www.regulations.gov/. Then follow the online search instructions to locate docket number "NHTSA-2021-0025."

II. Child Restraint Systems Involved: Approximately 13,880 Combi USA BabyRide rear-facing child restraint systems with model number 378099, manufactured between May 1, 2016, and August 31, 2019, are potentially involved.

III. Noncompliance: Combi explains that the noncompliance is that the subject rear-facing child restraint systems are equipped with 25-mm-wide webbing used in the center front harness adjuster that does not comply with the minimum breaking strength requirements as required in paragraph S5.4.1.2(a) of FMVSS No. 213. Specifically, the subject child restraint systems have an initial breaking strength of between 9,622 N and 10,136 N (median load 9,871 N), which is less than the required minimum breaking strength of 11,000 N.

IV. Rule Requirements: Paragraph S5.4.1.2(a) of FMVSS No. 213 includes the requirements relevant to this petition. The webbing of belts provided with a child restraint system and used to secure a child to a child restraint system shall have a minimum breaking strength for new webbing of not less than 11,000 N when tested in accordance with paragraph S5.1 of FMVSS No. 209. Each value shall be not less than 11,000 N. "New webbing" means webbing that has not been exposed to abrasion, light, or micro-organisms as specified elsewhere in FMVSS No. 213.

V. Summary of Combi's Petition: The following views and arguments presented in this section, "V. Summary of Combi's Petition," are the views and arguments provided by Combi

and do not reflect the views of the Agency. Combi describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Combi submitted the following reasoning:

1. Combi has not received any reports from consumers related to the strength of the 25-mm-wide webbing in the BabyRide infant car seat.
2. The BabyRide with the 25-mm-wide webbing at issue complies with dynamic testing requirements of FMVSS No. 213, paragraph S5.1, in testing conducted by both NHTSA and Combi between 2016 and 2019. This includes testing with the 12-month-old CRABI ATD that represents the heaviest child that the BabyRide infant car seat is used with.
3. The actual webbing strength of the 25-mm-wide webbing far exceeds the strength needed for the application of an infant car seat used with children 10 kg (22 lbs.) or less. When tested with the 12-month-old CRABI ATD that weighs 22 lbs., representing the maximum weight occupant for the car seat, the maximum load that the 25-mm-wide webbing is subjected to during an FMVSS No. 213 compliance crash test is 302.9 N. Combi believes that this peak loading represents the maximum load applied to the 25-mm-wide webbing in all Combi USA BabyRide infant car seats. Combi bases that belief on the total belt load applied to the vehicle lap belt and LATCH belt recorded in the 2016 UMTRI and 2021 UMTRI testing with the 12-month-old ATD. The total vehicle lap belt load recorded in the 2021 test (AG2101) of 4206 N (945.6 lbs.) is consistent with the total vehicle lap belt and LATCH belt loading recorded in the 2016 tests conducted by UMTRI with the 12-month-old ATD of 4,067.2 N (851.4 lbs.) in Test TT1603 and 3,989.1 N (896.8 lbs.) in Test TT1604. The maximum load measured in the 25-mm-wide webbing in the BabyRide infant car seat is much lower than the total load applied to the vehicle lap belt and LATCH belt as the car

seat is for rear-facing use only and for use with a child weighing 10 kg (22 lb.) or less. In a rear-facing car seat, a significant portion of the load from the ATD during the dynamic test is transferred and supported by the seatback, thus reducing the maximum load applied to the harness system including the 25-mm-wide webbing. Combi has reviewed the harness webbing specifications defined in FMVSS No. 213 and notes the webbing specified is for use with children up to 80 lbs. (36 kg), and sufficiently strong to restrain an 80 lb occupant when forward facing. Combi states that the loads carried by the seatback support surface significantly reduce the loading experienced by the harness webbing and center front adjuster webbing as shown in the UMTRI test AG2101, and that this load is significantly lower than the load applied to the harness and center front adjuster webbing when used in a forward-facing restraint system that is used up to 80 lbs. Combi asserts that rear-facing use of the BabyRide car seat with children 22 lbs. or less will subject the harness belts and adjuster belt to only a small percentage of the load applied when forward-facing with an occupant weighing 80 lbs. Combi believes that the initial minimum breaking strength of 11,000 N is much higher than the strength needed for a rear-facing car seat like the BabyRide even when occupied by a child at the maximum weight and that the 25-mm-wide webbing used in the BabyRide exceeds the forces applied in a crash.

4. Combi cites the webbing requirements in FMVSS No. 213 for new webbing breaking strength, S5.4.1.2(a), webbing strength after abrasion, S5.4.1.2(b)(1), and webbing strength after exposure to light, S5.4.1.2(c)(1) and summarizes results for testing based on these requirements performed by Combi and/or NHTSA. In Combi's summation, they explain that the initial breaking strength of the 25-mm-wide webbing in NHTSA's and Combi's[1] testing is between 9,266 N

[1] Test Report No. 4737580AL-1R-21, (March 16, 2021 revised)

and 10,136 N[2] which they recognize does not comply. Combi notes that based on the required 11,000 N minimum strength for new webbing, the median breaking strength requirement after abrasion of not less than 75 percent of the new webbing strength must be at least 8,250 N. In spite of this, Combi believes from their testing that the average breaking strength after abrasion of 8,047 N or 86.7 percent of the original breaking strength of the 25-mm-wide webbing complies. The median[3] breaking strength of the 25-mm-wide webbing after exposure to light in NHTSA's testing measured 9,752 N or 98.8 percent of the original breaking strength, which Combi believes complies.

Combi concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[4] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[5]

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[2] In their petition, Combi mistakenly refers to 10,136 N as 10,126 N

[3] In their petition, Combi mistakenly referred to the median breaking strength after exposure to light as the average breaking strength after exposure to light

[4] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[5] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. "The absence of a complaint does not mean there have not been any problems or failures, and it does not mean that there will not be failures in the future."[6] "[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work."[7]

Combi identifies no receipt of any reports from consumers related to the strength of the 25-mm-wide webbing. As discussed above, the Agency finds the absence of consumer complaints (or reports as Combi noted) insufficient evidence of an inconsequential effect on the safety of the webbing.

Next, Combi argues that, based on measured forces acting on the 25-mm-wide webbing when subjected to the dynamic testing requirements of FMVSS No. 213 using the 22 lbs. 12-month-old CRABI ATD, the maximum weight occupant for the car seat, the subject child restraints present no motor vehicle safety risk since the measured forces acting on the 25-mm-wide webbing were no higher than 320.9 N. Combi also believes that this represents the maximum load applied to 25-mm-wide webbing in all Combi USA BabyRide Infant Car Seats, based on the total belt load applied to the vehicle lap belt and LATCH belt recorded in 2016 and 2021 UMTRI testing with the 12-month-old ATD.

Consistent with the Agency's decision to deny Combi's 2013 petition[8] for inconsequential noncompliance for failure to comply with the initial webbing breaking strength requirements, NHTSA is not persuaded by these arguments. NHTSA does not simply have one performance test, a dynamic test. NHTSA has multiple performance tests because a single test does not address the range of safety concerns with child restraints. The webbing breaking

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[6] *See Dorel Juvenile Group, Denial of Petition for Decision of Inconsequential Noncompliance*, 78 FR 53189, 53190 (August 28, 2013).

[7] *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

[8] *Combi USA, Inc., Denial of Petition for Decision of Inconsequential Noncompliance*, 78 FR 71028 (and decisions cited therein) (Nov. 27, 2013)

strength test and the child restraint system dynamic test do not test for the same conditions and serve distinct purposes. The webbing breaking strength test conditions are necessarily more severe than those for dynamic testing to help ensure that the webbing will afford effective protection for severe crashes, even after the webbing degrades due to abrasion in use and exposure to sunlight. In addressing past similar arguments raised by Combi, who submitted webbing load force data generated in dynamic testing to demonstrate apparent safety margins in comparison to webbing breaking strength test results, the Agency stated that "[a] 30 mile per hour test is not indicative of the upper limit of safety. The test conditions in FMVSS No. 213 reflect the concern that child restraints will withstand even the most severe crashes. These are well above 30 mph." *Id.*

Combi asserts that in a rear-facing car seat, a significant portion of the load from the ATD during the dynamic test is transferred and supported by the seat back, thus reducing the maximum load applied to the harness system including the 25-mm-wide webbing. The petitioner's reasoning is unpersuasive. The minimum initial webbing strength requirements apply to the component level, i.e. child restraint webbing must comply as required in paragraph S5.4.1.2(a) of FMVSS No. 213 when tested independently from the child restraint system, and are not uniquely specified according to rear-facing or forward-facing child restraint systems. The breaking strength requirements ensure that the performance of webbing over the lifetime of a child restraint system is sufficient to provide the necessary protection. Requirements that apply to new child restraints only, such as the dynamic sled test conducted on the child restraint as a system, do not provide comparable assurances, particularly for components such as webbing that are likely to experience extraordinary "wear and tear" and exposure to elements that can degrade the webbing strength in the course of normal use.

Combi cites the webbing requirements in FMVSS No. 213 for new webbing breaking strength, S5.4.1.2(a), webbing strength after abrasion, S5.4.1.2(b)(1), and webbing strength after exposure to light, S5.4.1.2(c)(1) and summarizes results for testing based on these requirements

performed by Combi and/or NHTSA. In NHTSA's compliance tests of the Combi BabyRide 25-mm-wide webbing for new webbing breaking strength, three samples were tested and each sample failed to meet the minimum requirement of 11,000 N.[9] Combi submitted test data for a single sample of the 25-mm-wide webbing measuring 9,278 N initial breaking strength, also less than the required minimum value of 11,000 N and consistent with their submitted 2016-2019 production data which measured between 9,600 N and 9,900 N.

Combi also submitted test data for two samples of the 25-mm-wide webbing after being subjected to abrasion and referenced a 98.8 percent retention of the original breaking strength in NHTSA's testing of the 25-mm-wide webbing after exposure to light. The Agency is not opining on the compliance of these results as they are not germane to the subject noncompliance, thus not dispositive of the inconsequentiality analysis.

Combi believes that the initial minimum breaking strength of 11,000 N is much higher than the strength needed for a rear-facing car seat like the BabyRide, even when occupied by a child at the maximum weight, and that the 25-mm-wide webbing used in the BabyRide exceeds the forces applied in a crash. FMVSS No. 213 requires an absolute minimum initial breaking strength for new webbing to provide a margin of safety for use throughout the life of a child restraint. In the Agency's analysis in determining a minimum breaking strength requirement for new webbing, published in a Notice of Proposed Rulemaking (NPRM)[10] and subsequent Final Rule,[11] NHTSA examined harness webbing compliance data for 109 child restraint systems collected from 2000 to 2002. That compliance data showed that 92 percent (100 out of 109) of the harness webbing complied with the proposed 11,000 N minimum breaking strength requirement. In *Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance*, 75 FR 510 (January 5, 2010) (NHTSA-2008-0132) (and decisions cited therein),

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[9] Frank Savino (2020, October). *Child restraint system, component parts: Model No.: Combi Babyride* (Report No.4642921-018). National Highway Traffic Safety Administration.

[10] 70 FR 37731 (June 30, 2005)

[11] 71 FR 32855 (June 7, 2006)

the Agency explained that an inconsequentiality petition is not the appropriate means to challenge the methodology of a specific test and/or stringency of a performance requirement in a FMVSS. The appropriate venue for such arguments is to comment during the proposal phase or as a petition for rulemaking to amend a current safety standard. During the 2005-2006 proposal and final rulemaking phases for the new webbing strength requirement, NHTSA published a report showing test results for the Combi Baby One dated June 10, 2005.[12] In that report the median new webbing strength of the adjuster webbing was 9,207 N (converted from 2,070 lbs.). Despite this, Combi neither commented on the NPRM nor petitioned for reconsideration of the final rule with respect to FMVSS No. 213 paragraph S5.4.1.2(a).

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that Combi has not met its burden of persuasion that the subject FMVSS No. 213 noncompliance is inconsequential to motor vehicle safety. Accordingly, Combi's petition is hereby denied, and Combi is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Joseph Kolly,

Acting Associate Administrator for Enforcement.

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[12] Frank Savino (2005, June). *Child restraint system, component parts: Model No.: Combi - Baby One* (Report No.206827-08). National Highway Traffic Safety Administration.