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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0074; Notice 2]

Baby Trend, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petition.

SUMMARY: Baby Trend, Inc., (BT), has determined that certain BT Hybrid 3-in-1 Combination Booster Seat child restraint systems (CRSs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. BT filed an original noncompliance report dated July 6, 2022. BT subsequently petitioned NHTSA on August 1, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of BT's petition.

FOR FURTHER INFORMATION CONTACT: Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, kelley.adamscampos@dot.gov, (202) 366-7479.

SUPPLEMENTARY INFORMATION:

I. Overview:

BT determined that certain BT Hybrid 3-in-1 Combination Booster Seat CRSs do not fully comply with paragraph S5.4.1.2(a) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213).

BT filed an original noncompliance report dated July 6, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. BT petitioned NHTSA on August 1, 2022, 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 BT's petition was published with a 30-day public comment period, on September 9, 2022, in the **Federal Register** (87 FR 55465). 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-2022-0074."

II. Child Restraint Systems Involved:

Approximately 101,361 BT Hybrid 3-in-1 Combination Booster Seat CRSs, manufactured from December 6, 2021, to June 6, 2022,[1] are potentially involved:

III. Noncompliance:

BT explains that the lower anchor webbing in the subject CRSs failed the minimum required breaking[2] strength when tested in accordance with S5.1 of FMVSS No. 209, referenced in FMVSS No. 213 S5.4.1.2(a). Specifically, the breaking strength of the lower anchor webbing of the Lower Anchors and Tethers for CHildren (LATCH[3]) system in the subject CRSs was 13,926 Newtons (N), 13,940 N, and 14,087 N when tested by NHTSA.

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 attach the system to the vehicle must have a minimum breaking strength for new webbing of not less than 15,000 N, including the tether and lower anchorages of a child restraint anchorage system, when tested in accordance with S5.1 of FMVSS No. 209. "New webbing" means webbing that has not been exposed to abrasion, light or micro-organisms as specified elsewhere in FMVSS No. 213.

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[1] As reported in BT's July 6, 2022, Part 573 submission
[2] In its petition, BT refers to breaking as tensile
[3] "LATCH" refers to the child restraint anchorage system that FMVSS 225, "Child restraint anchorage systems," requires to be installed in motor vehicles. Industry and advocates have developed the term "LATCH" to refer to Standard 225's child restraint anchorage system.

V. Summary of BT's Petition:

The following views and arguments presented in this section, "V. Summary of BT's Petition," are the views and arguments provided by BT. They do not reflect the views of the Agency. BT describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Upon receiving an information request from NHTSA on June 6, 2022, regarding the subject noncompliance, BT states that production and distribution of the subject CRSs were halted, and BT began an investigation. BT states that, as part of its investigation, it conducted dynamic sled testing, webbing testing and examined internal processes to determine the root cause of the noncompliance. As a result of its investigation, BT found that the wrong webbing, with a failure threshold characterized as marginally below the breaking strength required in FMVSS No. 213 S5.4.1.2(a), was installed in a portion of the subject CRSs, but BT believes, through its analysis of existing and new test data, that the subject noncompliance is inconsequential to motor vehicle safety.

BT claims that FMVSS No. 213 dynamic sled testing ensures the structural integrity of the subject CRSs and that this is supported by NHTSA's November 2, 2020, Notice of Proposed Rulemaking[4] (NPRM) regarding FMVSS No. 213, where the Agency determined that no change in the severity of the FMVSS No. 213 crash pulse was warranted. In its petition, BT questions "the utility of considering the webbing strength tests in isolation rather than the integrity of the LATCH system as required under FMVSS 213." BT believes the webbing strength tests specified in FMVSS No. 213 have utility in safety "only in the context of maintaining strength of the webbing with wear and tear of the child restraint following years of use" and asserts that the unabraded webbing strength test is not necessary to ensure the structural integrity of a CRS.

[4] Federal Motor Vehicle Safety Standards; Child Restraint Systems, Incorporation by Reference; 85 FR 69388 (November 2, 2020.)

BT states that in addition to the dynamic sled testing required by FMVSS No. 213, it conducts dynamic sled testing, through Consumer's Union (CU), on child restraints produced by each of its factories. BT contends that if NHTSA previously found the dynamic sled testing at 48 kph to be sufficient to ensure the structural integrity of a CRS, BT's additional CU testing is also similarly sufficient.

The CU dynamic testing, as BT explains, has important differences from that required by FMVSS No. 213. First, the test is conducted at 56 kph whereas the FMVSS No. 213 test is conducted at 48 kph. Second, the bench used is derived from a vehicle seat, providing "a boundary condition for LATCH attachment and seat cushion-to-CRS interaction." Finally, the CU test protocol includes a structure to represent the seat in front of the CRS seat position, which, BT claims, provides a "clear tell-tale" of failure in any way of the LATCH lower anchor belt in adequately restraining the CRS and its occupant.

BT also claims that the minimum LATCH lower anchor webbing strength requirements of FMVSS No. 213 are unrealistic, based on dynamic crash testing it conducted on the Hybrid 3-in-1 CRSs using the same incorrect webbing used on the noncompliant CRSs that are the subject of its petition, and without attaching the CRS' tether to the tether anchor. This testing, as BT explains, was conducted on the test bench proposed by NHTSA in the 2020 FMVSS No. 213 NPRM.[5] Other test apparatus and conditions used in its testing were those either specified in FMVSS No. 213, and/or the current NPRM, or "widely accepted" as due care tests. For the tests BT conducted in the frontal direction, sled test speeds ranging from 57.1 kph to 63.9 kph were used. See the Table[6] in BT's petition for the parameters used in its testing. BT states that it is confident that its frontal sled testing conducted at "64 kph…encompasses all crashes including the most severe crashes" and that "at no time and in no test did the LATCH Lower Anchor webbing or belt system fail to perform its intended purpose of restraining the CRS." BT also

[5] *Id.*
[6] Section 3 of BT's petition

found "that at no time during any of these tests did the LATCH Lower Anchor webbing load exceed 5,000 Newtons and, more importantly, come even close to the 15,000 Newton minimum threshold" required by FMVSS No. 213.

In its petition, BT shares a graphic[7] to illustrate its beliefs for the minimum strength of various components in the LATCH system and points to examples where, "in the rare instances of failures of the LATCH system, the failures occurred in …the LATCH lower anchor on the vehicle." Thus, BT contends that the webbing is not the weak link in the LATCH lower anchor system, and that "any deficiencies with the strength of the LATCH Lower Anchor webbing would have been revealed in the dynamic sled tests of FMVSS 213."

BT states that there is no evidence of webbing failure in any CRS in the real world, that it has never received a complaint, nor has any knowledge, of a webbing failure on any of its products in the real world.

BT concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition.

VI. NHTSA's Analysis:

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS is substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[8]

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.[9] In general, NHTSA does not consider the absence of complaints or injuries when determining if

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[7] Section 5 of BT's petition

[8] *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).

[9] *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).

a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[10]

BT makes several claims and assertions in support of its petition, including its claim that the wrong webbing installed in the subject CRSs had a breaking strength "marginally" below that required by FMVSS No. 213. NHTSA does not agree, based on its own compliance test results, that the breaking strength values were marginal. Next, BT claims it to be "NHTSA's current and well-justified position" that the dynamic sled testing contained in FMVSS No. 213 ensures the structural integrity of the "CRS system, including the LATCH lower anchor webbing in an unabraded condition." BT furthers this claim, opining that the Agency should also conclude that BT's CU testing it conducts "is similarly sufficient to ensure structural integrity of a CRS" based on "important differences" from FMVSS No. 213, i.e., a test speed of 56 kph and a test bench derived from a vehicle seat. NHTSA does not find these claims to be relevant or persuasive. It appears that BT is misapplying the conclusion the Agency made in the 2020 FMVSS No. 213 NPRM (*supra*), i.e., that there was no safety need to increase the sled acceleration pulse for the dynamic systems test in S6.1 of FMVSS No. 213. This conclusion was specific to the child restraint system dynamic test. This test is not the only performance test in FMVSS No. 213 and does not address the same conditions, nor serve the same purpose, as the webbing breaking strength test. NHTSA has multiple tests because a single test does not address the range of safety concerns with child restraints. The breaking strength requirements ensure that the performance of the webbing over the lifetime of a child restraint system is sufficient to provide the necessary protection, even after wear and tear that webbing can experience during the course of normal use.

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[10] *See Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); *see also 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").

BT asserts that the unabraded webbing strength test is not necessary to ensure the structural integrity of a CRS, and that the minimum LATCH lower anchor webbing strength requirements of FMVSS No. 213 are unrealistic. BT bases this assertion on dynamic crash testing it conducted on the Hybrid 3-in-1 CRSs using the same incorrect webbing used on the noncompliant CRSs subject of its petition. According to its petition, tests were conducted at 63.9 kph without attaching the tether to its corresponding anchor, asserting that under this condition "the entire restraining load was borne by the LATCH webbing."

BT also states, "at no time and in no test did the LATCH Lower Anchor webbing or belt system fail to perform its intended purpose of restraining the CRS" and that the loads on the subject webbing during any of the foregoing tests did not exceed 5,000 N. This argument challenges the stringency of the requirement in the standard, to which a petition for rulemaking, not an inconsequentiality petition, is the appropriate means.[11] Moreover, even if these foregoing arguments were relevant, NHTSA does not find them availing. As explained in NHTSA's 2006 Final Rule[12] adopting the new webbing breaking strength requirements, Standard 213's minimum requirements are not intended to only ensure that CRSs in new condition are safe, but also safe in the cases of foreseeable wear, such as in the breaking strength requirement to which this population of CRSs failed to comply. Requirements at the component level increase the likelihood that components, like webbing, maintain their integrity for the lifetime of the child restraint. Such comparable assurances are not provided by the dynamic system test in Standard 213, added in December 1979.[13] In 2002, the Agency found it inappropriate that minimum breaking strength requirements for new webbing in child restraint systems were absent from FMVSS No. 213[14] and the 2005-2006 rulemaking ensued. This established NHTSA's long-standing position that webbing strength requirements are necessary for safety and, consistent

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[11] *See Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance*, 75 FR 510, January 5, 2010.
[12] 71 FR 32855 (June 7, 2006)
[13] 44 FR 72131 (December 13, 1979)
[14] Evenflo Company, Inc., Grant of Application for Decision of Inconsequential Noncompliance, 67 FR 21798 (May 1, 2002)

with how we addressed past similar arguments[15] by CRS manufacturers who submitted webbing load force data generated in dynamic testing to demonstrate apparent safety margins in comparison to webbing breaking strength test results, BT has not compelled NHTSA to consider otherwise.

NHTSA is also not persuaded by BT's argument, as its petition further goes on in Section 5, that "any deficiencies with the strength of the LATCH Lower Anchor webbing would have been revealed in the dynamic sled tests of FMVSS 213." As explained above, FMVSS No. 213 has multiple performance tests serving different purposes. It is not proper to apply or substitute the outcome from one test for another; to be compliant with FMVSS No. 213 all applicable requirements must be satisfied.[16] Thus, BT has not met its burden of persuasion.

Finally, neither BT's claim that there is no evidence of any CRS webbing failures, including on any of its products, in the real world, nor BT's lack of complaints are persuasive to the Agency. Notwithstanding that BT did not provide any evidence to support these claims, as stated at this notice's onset NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety.

VII. NHTSA's Decision:

In consideration of the foregoing, NHTSA has decided that BT has not met its burden of persuasion that the subject FMVSS No. 213 noncompliance is inconsequential to motor vehicle safety. Accordingly, BT's petition is hereby denied, and BT 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)

Anne L. Collins

Associate Administrator for Enforcement.

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[15] Combi USA, Inc., 78 FR 71028 (Nov. 27, 2013), Combi USA, Inc., 86 FR 47723 (Aug. 26, 2021)

[16] BT asserts that the noncompliance of the BT Hybrid 3-in-1 would have been "revealed" in the Office of Vehicle Safety Compliance's (OVSC) compliance program's dynamic testing. NHTSA notes that the Agency's dynamic testing of BT's Hybrid 3-in1 did not result in LATCH lower anchor webbing failures. *See* https://static.nhtsa.gov/odi/ctr/9999/TRTR-647891-2022-001.pdf

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