UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue SE
Washington, DC 20590

In re:	)
AQ24-001 Evenflo Company, Inc.; Revolve360 Products Certification	)

SPECIAL ORDER DIRECTED TO EVENFLO COMPANY, INC.

Mr. Larry Buonomo
General Counsel
Evenflo Company, Inc.
225 Byers Road
Miamisburg, OH 45342

This Special Order is issued by the National Highway Traffic Safety Administration ("NHTSA"), an Operating Administration of the United States Department of Transportation, pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. §§ 510.7-510.8.[1]

Pursuant to the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. Chapter 301, in general, "a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any . . . motor vehicle equipment . . . unless the . . . equipment . . . complies with [all applicable FMVSS] and is covered by a certification issued under section 30115 of this title." 49 U.S.C. § 30112. "A person may not issue" that self-certification of compliance with the FMVSS "if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect." *Id.* § 30115.

[1] *See* 49 C.F.R. §§ 1.95, 501.8(d)(3) (delegations of authority).

On January 5, 2024, NHTSA opened an Audit Query investigation, AQ24-001, to examine Evenflo Company, Inc.'s ("Evenflo") certification of its Revolve360 product and certain other "Revolve360" products to FMVSS No. 213. As described in the opening resume for the investigation, as documented in a test report (copy enclosed), the Revolve360 appears not to comply with a number of FMVSS No. 213 requirements, including but not limited to the means of installation in S5.3.2 and labeling requirements in S5.5.[2] Other similar Revolve360 products, which also use detachable bases, appear to pose the same issues with the FMVSS No. 213 requirements. Evenflo has continued to certify and offer the Revolve360 products for sale. This Special Order requires information related to Evenflo's basis for certification that the Revolve360 and other similar products comply with all applicable FMVSS.

As indicated in the opening resume for this investigation, NHTSA is also aware of at least six crash incidents in the field during which the Revolve360's shell—as referred to by Evenflo on the Revolve360's printed instructions—reportedly separated from its detachable base. NHTSA was also subsequently made aware of an additional field incident through a VOQ and reporting by Evenflo under 49 C.F.R. Part 579. This Special Order also requires information related to potential separations.

Evenflo's response to this Special Order must be provided to NHTSA's Office of the Chief Counsel by June 18, 2024. The response should be sent to Stephen Hench, Office of the Chief Counsel, at stephen.hench@dot.gov or, for large submissions, through the DOT Secure Large File Transfer Solution ("SLFTS") system. To utilize SLFTS, please send an email to stephen.hench@dot.gov.

Evenflo's response must be signed under oath, *i.e.*, accompanied by a declaration,

[2] This test report is not a determination that a noncompliance exists under 49 U.S.C. § 30118.

signed by a responsible officer of Evenflo, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Evenflo to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order. 28 U.S.C. § 1746; 49 U.S.C. § 30166(g)(1)(A); 49 C.F.R. § 510.7.

Failure to respond fully or truthfully to this Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses and may subject Evenflo to civil penalties of up to $27,168 per day, up to a maximum penalty of $135,828,178 for a related series of daily violations. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). Falsifying or withholding information in response to this Special Order may lead to criminal penalties of a fine or imprisonment of up to 15 years, or both. 49 U.S.C. § 30170(a)(1).

DEFINITIONS

Unless otherwise stated in the text, the following definitions apply to the information requests set forth below:

- **Evenflo:** "Evenflo" or "you" means Evenflo Company, Inc., and all other aliases, and all of its/their past and present officers and employees, and representatives that have safety-related or compliance information, whether assigned to its/their principal offices or any of its/their field or other locations, including all of its/their divisions, subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Evenflo, who are or were involved in any way with any of the following related to the compliance of the Revolve360 and identical or substantially similar products with all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and/or Evenflo's certification thereof:

    (a) design, analysis, modification or production;
    (b) testing, assessment, or evaluation; or

(c) regulatory certification and/or compliance determination with any FMVSS.

- **Revolve360:** "Revolve360" means the product Evenflo markets as a "rotational all-in-one car seat," trademarked as the "Revolve360," certified as complying with FMVSS No. 213 and manufactured, imported, delivered, offered for sale, or sold in the United States by Evenflo.

- **Document(s):** "Document(s)" is used in the broadest sense of the word and means all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, documents generated through litigation, arbitration, or mediation, pleadings, mediation statements, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet, and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Evenflo, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document that contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)" also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by Evenflo or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Identical or Substantially Similar Product:** "Identical or substantially similar product" means any product that has rear-facing and forward-facing use modes and a detachable base, including but not limited to the Revolve360 Slim and Revolve360

Extend, certified as complying with FMVSS No. 213 and manufactured, imported, delivered, offered for sale, or sold in the United States by you that is identical, modified, or similar in design or construction to the Revolve360.

- **Identify:** "Identify" when used with respect to a document means to state (1) the type of document (e.g., letter, memorandum, hand-written note, facsimile, e-mail); (2) its date of origin or creation; (3) its author and addressee(s); (4) a brief description of its subject matter and size; and (5) any unique number, mark, or other designation (e.g., Bates number).

- **Pre-production:** "Pre-production" means developed or created prior to the beginning of serial production, which encompasses all variations of design including, but not limited to, prototype, developmental, pilot, and/or other pre-volume production.

INSTRUCTIONS

Please follow the instructions below when providing responses to the numbered information requests in the next section.

1. Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-100), National Highway Traffic Safety Administration, by email to Stephen Hench at stephen.hench@dot.gov, or through the DOT Secure Large File Transfer Solution system.[3]

2. Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.

3. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.

[3] To use the File Transfer System, please email stephen.hench@dot.gov.

4. You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, explain what information is needed, and provide a response based on the information that is available. If, on the basis of attorney-client, attorney work product, or other privilege, you do not submit one or more requested documents or items of information in response to this Special Order, you must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, name and position of the person(s) from whom, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

5. After your response to each request, state whether you previously had any responsive documents that are no longer within your possession, custody, or control, including but not limited to because the documents were lost or destroyed. If such documents ever existed: describe the documents; identify the reason that the documents are no longer in your possession, custody, or control; identify the date that you last had the documents; and identify who may have copies of such documents.

6. If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4) or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of the Chief Counsel (NCC-100), National Highway Traffic Safety Administration as instructed below.

7. NHTSA is treating electronic submission as an acceptable method for submitting confidential business information (CBI) to the agency under 49 C.F.R. Part 512. Since Part 512 submissions are handled by NHTSA's Office of the Chief Counsel, any Part 512 submission should be sent to the Office of the Chief Counsel electronically. Specifically, any CBI submissions sent via email should be sent to Stephen Hench at stephen.hench@dot.gov. For CBI submissions via a secure file transfer application, Stephen Hench (stephen.hench@dot.gov) must be notified when files are submitted and have access to retrieve the submitted files. Please refer to AQ24-001 in your response to this Special Order and in the subject line of any confidentiality request submitted to the Office of the Chief Counsel.

At this time, regulated entities should not send a duplicate hardcopy of their electronic CBI submissions to DOT headquarters. For questions about CBI issues, please contact Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov or 202-366-8534.

8. All documents shall be produced electronically, as described below, in a common format (*e.g.*, Word, PDF, Microsoft Access) or other electronic formats commonly used by Evenflo and discernable to NHTSA.

a. Hard copy documents shall be imaged in PDF format. They shall be provided as multi-page PDFs with document level optical character recognition (OCR).

b. Electronically Stored Information (ESI) shall be converted to multi-page PDFs and produced along with document level OCR/extracted text.

c. You shall organize the documents as instructed in the request to which it responds or, if no instruction is given in a request, in chronological order by project, report, or other similar categorization responsive to that numbered request.

d. After the documents are so organized, and in sequential order to the request to

which each responds, you shall apply Bates Numbers to the entire production.

e. You shall produce an index that lists the title of each document produced, the Bates Numbers on the document, and the request to which it corresponds.

9. When a request calls for a detailed narrative response, do not identify business records or other documents in lieu of providing a written narrative. A response to a request for a written narrative that solely directs NHTSA to documents will be considered non-responsive and may result in civil penalties. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). A response to a request for a detailed, narrative response that includes references to specific Bates Number(s) in addition to a written narrative will not be considered a violation of this Instruction.

10. The singular includes the plural; the plural includes the singular. The masculine gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document request all responses which might otherwise be construed to be outside its scope.

11. Evenflo's response to this Special Order must be under oath, *i.e.,* accompanied by a declaration, signed by a responsible officer of Evenflo, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Evenflo to be searched diligently for information and documents responsive to this Special Order and produced them to

NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.

12. The requests in this Special Order are deemed to be continuing in nature so as to require additional or amended responses from you should you obtain or become aware of any new, additional, or differing responsive information or documents.

REQUESTS

1. Provide the name, model number, and a complete description of any product certified as complying with FMVSS No. 213 and manufactured, imported, delivered, offered for sale, or sold in the United States by you that has rear-facing and forward-facing use modes and a detachable base, including but not limited to the Revolve360, Revolve360 Slim, and Revolve360 Extend.

   a. Of the products identified, state which products rely on a detachable base for vehicle installation.

   b. For each product that relies on a detachable base for vehicle installation, state its use mode(s) and each means of installation on which it relies under FMVSS No. 213 S5.3.2: Type 1 seat belt assembly only; child restraint anchorage system only; and Type 1 seat belt assembly plus a tether anchorage only (if needed to comply with S6.1).

2. Separately by model designation or other designation used by you, for each and every product identified in 1:

   a. State each and every basis, including but not limited to each and every test and analysis, and identify all other relevant materials, that you or any other company considered or relied upon in certifying each product to the requirements

of FMVSS No. 213.

b. For each test or analysis identified in response to 2a, provide a copy of such test and analysis, the name and address of the testing facility, a full description of the product tested, and a summary of the test results. Also identify at what phase of development or production each test was performed, including but not limited to pre-production, first article, production, or certification.

c. Identify which test(s) and analyses provided in response to 2b served as your basis for certification to each of the following requirements of FMVSS No. 213:

i. S5.1 Dynamic Performance

ii. S5.3 Installation

iii. S5.4 Belts, belt buckles, and belt webbing

iv. S5.5 Labeling

v. S5.6 Printed Instructions for Proper Use

vi. S5.7 Flammability

vii. S5.8 Information requirements – attached registration form and electronic registration form

viii. S5.9 Attachment to child restraint anchorage system

3. Separately, for the Revolve360 and all identical or substantially similar products:

a. Explain in detail the factors that led to Evenflo's decision to incorporate a detachable base in the design of the product, and the modes of use (e.g., forward-facing, rear-facing, high-back booster) where each factor played a role.

b. Explain how each factor identified in 3a influenced the product's means

for vehicle installation and mode(s) of use.

c. Produce a copy of each and every written and transcribed communication Evenflo had regarding the certification, specifications, and requirements of the product including, but not limited to the design, labeling, and printed instructions for use.

4. Labeling on the detachable base of the Revolve360 states: "Do not install or use child restraint in vehicle without base."

a. Explain what device constitutes the "child restraint" as used in this statement.

b. State the reason(s) for this statement.

c. For rear-facing, forward-facing and high back booster use modes, state separately for each mode whether Evenflo performed any tests, computer simulations or analysis, or other analyses without the use of the detachable base.

d. Provide the results and any conclusions made by Evenflo relating to all means of evaluating the tests, computer simulations or analysis, or other analyses stated in 4c, regardless of the outcome or conclusions drawn.

5. Separately, for all identical or substantially similar products:

a. List each and every date on which any labeling was revised since the product's initial production.

b. For each date listed in 5a, state whether any labeling affixed to the product includes any statement(s) advising against use "without base." If responding in the affirmative, explain your reason(s) for including the statement(s).

c. For each date listed in 5a, produce a copy or an image of each label

affixed to the product. Label each copy or image with the corresponding revision date listed in (a).

d. For rear-facing, forward-facing and high back booster use modes as applicable, state separately for each mode whether Evenflo performed any tests, computer simulations or analysis, or other analyses for evaluating the compliance of the product without the use of its detachable base.

e. Provide the results and any conclusions corresponding to all means of evaluating compliance stated in 5d, regardless of the outcome or conclusions drawn.

6. Paragraph S5.9(a), "*[a]ttachment to child restraint anchorage system*," of Standard 213 states that "in the case of rear-facing child restraints with detachable bases, only the base is required to have the components." Separately, for the Revolve360 and all identical or substantially similar products, state whether Evenflo believes this statement in S5.9(a) applies to the product. If responding in the affirmative:

a. State your reasons for that belief and the conditions under which you base that belief.

b. Explain how this statement in S5.9(a) applies to the product when used in forward-facing mode.

c. Explain how this statement in S5.9(a) applies to the product when used in high back booster mode.

7. Information submitted to NHTSA by Evenflo on March 1, 2023, identified six field incidents in which what Evenflo terms in its printed instructions as the "shell" of the Revolve360 separated from the detachable base during a crash. NHTSA was also subsequently

made aware of an additional field incident through a VOQ and reporting by Evenflo under 49 C.F.R. Part 579. Identify any additional field incidents of which Evenflo is aware where the shell of the Revolve360 separated from the detachable base in a crash or other scenario. For each incident identified, provide a copy of any incident report (if there is none, so state), complaint, or other available documentation. Your response should also specify the source of the report (owner, internet comment, etc.) to the extent not evident from the documentation provided.

8. For all identical or substantially similar products, identify all field incidents of which Evenflo is aware where the shell separated from the detachable base in a crash or other scenario. For each incident identified, state the model designation or other designation used by you, and provide a copy of any incident report (if there is none, so state), complaint, or other available documentation. Your response should also specify the source of the report (owner, internet comment, etc.) to the extent not evident from the documentation provided.

9. Identify and list all modifications or changes to the design, labeling, or printed instructions of the Revolve360, and to all identical or substantially similar products since their initial introduction to the market that may relate to the attachment or release of the detachable base.

a. For each modification or change, provide:

i. a detailed description of the modification or change;

ii. the reason(s) for the modification or change; and

iii. the date on which the modification or change was incorporated into production.

b. Describe whether any identified modifications or changes were made

available as a service component, and whether any modified component(s) can be interchanged with earlier production components.

10. State by brand and model designation all identical or substantially similar products you plan to introduce in the six months following the date of this Special Order.

Dated: April 19, 2024

K JOHN DONALDSON Digitally signed by K JOHN DONALDSON Date: 2024.04.19 15:32:51 -04'00'

John Donaldson
Acting Chief Counsel

cc via email
Erika Jones, ejones@mayerbrown.com

Enclosure 1, July 5, 2023 Test Report