Nuna Baby Essentials Inc
70 Thousand Oaks Boulevard, Morgantown, PA 19543

August 26, 2024

Adam Raviv
Chief Counsel
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Nuna Baby Essentials, Inc.'s Response to Special Order (AQ24-002)

Dear Mr. Raviv,

Nuna Baby Essentials, Inc. ("Nuna") is responding today to NHTSA's Special Order issued in investigation AQ24-002 on June 27, 2024. Before turning to the individual questions, Nuna believes it would be useful to summarize its view of the issues involved in this investigation. The introduction to the Special Order states that NHTSA believes that two child restraint systems manufactured by Nuna, the PIPA Lite and PIPA Lite R, "appear not to comply with a number of FMVSS No. 213 requirements."

Nuna strongly disagrees with this statement, and submits that the PIPA Lite and PIPA Lite R models were properly certified by Nuna as compliant with all applicable requirements of FMVSS No. 213 as of the time of their certification. This response addresses NHTSA's belt path/vehicle attachment concerns, which is directly related to NHTSA's labeling findings.

On October 12, 2022, NHTSA published to its website an interpretation letter addressed to an unidentified requester related to certain provisions of FMVSS No. 213. (Although the letter is dated May 31, 2022, it was not published to the publicly available website of interpretation letters until October 12, 2022.)

Prior to the issuance of this interpretation, on March 15, 2021, MGA performed compliance testing for NHTSA on the PIPA Lite and PIPA Lite R models as part of the agency's FY 2021 testing program. The MGA test reports for these two tests were both signed by MGA personnel on January 26, 2023, which is uncharacteristically lagging from the date of the tests in Nuna's experience. The copies of these test reports that were provided to Nuna by NHTSA were marked "DRAFT" and were not signed by NHTSA staff.

The draft MGA test reports both concluded that the Nuna products failed to comply with FMVSS 213's requirements for attachment to the motor vehicle (S5.3.2), apparently because the Nuna products at issue did not have a vehicle belt path on the seat shell, and do not have LATCH hardware on the seat shell. The Nuna products at issue rely on the detachable base for compliance with the requirements of S5.3.2, as discussed in more detail below. Each of the two draft MGA test reports linked to the October 2022 interpretation as "supporting [this] failure."

At the request of NHTSA staff, Nuna representatives met with NHTSA staff on March 29, 2023 to discuss the issues raised by this interpretation. During that meeting, Nuna pointed out:

- The October 2022 interpretation did not exist when MGA conducted the compliance tests of the PIPA Lite and PIPA Lite R in March 2021.
- Thus, the October 2022 interpretation cannot "support [the] failure" conclusions by MGA unless it is being applied retroactively.
- By the time the October 2022 interpretation was released to the public, Nuna had completed all of the PIPA Lite R Production was already completed, and nearly all of the PIPA Lite production. (*See* Production End Date Table in Response to Request No. 3)
- Nuna's certification of compliance for both models was completed long before the October 2022 interpretation existed, and relied on the plain language of FMVSS No. 213 and on prior compliance test reports conducted for NHTSA in which a child restraint design similar to the PIPA Lite and PIPA Lite R (*i.e.* relying on a detachable base for S5.3.2 compliance) was deemed compliant by NHTSA.
- Nuna also relied on publicly available interpretation letters and other public NHTSA statements treating a detachable base as part of a "child restraint system." NHTSA is aware that its prior interpretation letters supported a conclusion that a detachable base is part of a "child restraint system" because it had to deem one of those letters (addressed to Mr. Meyer) to be "superseded" by the October 2022 interpretation (*see* Footnote 13 to the Oct. 2022 interpretation).
- The October 2022 interpretation concludes that a child restraint system ***shell*** must have a belt path for the vehicle belt and have its own lower anchorage system components, but this is not based on any language in FMVSS No. 213 itself. The word "shell" never appears in FMVSS No. 213 (in referring to a component of a child restraint system), so adding new requirements applicable only to a child restraint system ***shell*** is not interpreting existing requirements.
- And, as to the lower anchorage (LATCH) system components, FMVSS No. 213 explicitly permits rear facing child restraints with detachable bases to locate the LATCH system components on the detachable base (S5.9(a)), so Nuna does not understand how its PIPA Lite and PIPA Lite R could have been deemed noncompliant with S5.3.2 in light of S5.9(a).

NHTSA cannot create new requirements for child restraint systems through an interpretation letter, especially one that is made publicly available after the child restraint systems at issue were already certified and produced.

As noted above, until the interpretation letter was issued in October 2022, NHTSA had been testing and deeming compliant child restraint systems without shell belt paths or shell-mounted LATCH attachment and which relied on detachable bases for vehicle attachment. *See, e.g.* Peg Perego NHTSA TRTR-636937-21303 (p. 18). *See also* Peg Perego TRTR-637278-21304, Peg Perego TRTR-637575-21304, Xportation Safety TRTR-637052-21304 and Orbit TRTR-647996-2001(213-MGA-21-039).

[redacted]

NHTSA also treats detachable bases as part of a "child restraint system" in its TREAD/Early Warning Rules, which were established through rulemaking in 2002 and 2003. In response to a JPMA petition for reconsideration of the 2002 EWR final rule, NHTSA stated as follows:

> JPMA asked whether "base" means only a detachable base used with an infant seat and not the permanently-installed base associated with some designs of convertible child restraints that allow changing positions for child comfort. We defined "base" as "***the detachable bottom portion of a child restraint system*** that may remain in the vehicle to provide a base for securing the system to a seat in a motor vehicle." Thus, this term applies only to the detachable base used with an infant seat.

(Docket No. NHTSA 2001-8677; Notice 5) (emphasis added), 68 Fed. Reg. 35132 at 35133, June 11, 2003.

Based on the language of FMVSS 213, NHTSA's prior statements in connection with rulemaking, compliance tests and legal interpretations of this standard, and the validation of an independent third party laboratory, Nuna reasonably concluded that the PIPA Lite and PIPA Lite R complied with FMVSS No. 213's requirements for vehicle attachment at the time of their compliance certification. Nuna continues to believe that the draft MGA test reports provided to Nuna are not valid indicators of a noncompliance with S5.3.2 of FMVSS No. 213.

REQUESTS

1. Separately, for the PIPA lite and PIPA lite r, state the dates that production began and, if applicable, ended.

[redacted]

2. Labeling on the "infant car seat" of the PIPA lite, model number CF08500CVR, and of the PIPA lite r, model number CF08508600CVR, states: "NEVER install child restraint without base." Separately, for the PIPA lite and PIPA lite r:

[redacted]

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

[redacted]

[redacted]

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

[redacted]

c. State whether Nuna performed any tests, computer simulations or analysis, or other analyses of the PIPA lite and PIPA lite r without the use of the detachable base.

[redacted]

d. Provide the results and any conclusions made by Nuna relating to all means of evaluating the tests, computer simulations or analysis, or other analyses stated in 2c, regardless of the outcome or conclusions drawn.

[redacted]

e. State whether any identical or substantially similar products contain any statement(s) advising against use "without base." If answering in the affirmative, provide the information in Requests 2a–d separately for each product, and also list each and every date on which any labeling was revised since the product's initial production.

[redacted]

3. Provide the name, model number (or other designation used to describe the product), 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 only a rear-facing use mode and a detachable base, including but not limited to the Nuna PIPA lite and Nuna PIPA lite r.

[redacted]

Nuna Rear Facing Only Infant Seat Information

[redacted]

4. Of the products identified in Request 3, state which products rely on a detachable base for vehicle installation using a Type 1 seat belt assembly.

[redacted]

5. Separately by model designation or other designation used by you, for each and every product identified in Request 4:

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.

[redacted]

b. For each test or analysis identified in response to Request 5a, 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.

[redacted]

[redacted]

c. Identify which test(s) and analyses provided in response to Request 5b 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

[redacted]

[redacted]

6. For all products identified in Request 4, explain in detail the factors that led to Nuna's decision to rely on a detachable base for vehicle installation using a Type 1 seat belt assembly. From the factors identified:

[redacted]

a. Explain how each factor influenced the Type 1 seat belt assembly means for vehicle installation and use designed on the product.

[redacted]

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

[redacted]

7. Separately, by model designation or other designation (as identified in Request 3), for each and every product identified in Request 3 other than the PIPA lite and PIPA lite r, state the date that production began and, if applicable, ended.

[redacted]

8. Identify any field incidents Nuna is aware of where the "infant car seat" of a subject Nuna product or any identical or substantially similar product 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, claim, or other documentation related to the incident. Your response should also specify the source of the report (owner, internet comment, etc.) to the extent not evident from the documentation provided.

[redacted]

9. Identify any consumer complaints relating to the subject Nuna products or any identical or substantially similar product pertaining to the installation of the product in a vehicle without its detachable base, or pertaining to the product's available means for vehicle installation.

[redacted]

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.

[redacted]

Respectfully submitted,

Steve Gerhart
Vice President, Product Development
Nuna Baby Essentials, Inc.

cc: Erika Jones
Daniel Mee

CERTIFICATION

I, STEVEN G GERHART, hereby declare under the penalties of perjury that I am an officer of Nuna Baby Essentials, Inc., that the foregoing responses were prepared by me or under my supervision, that I have caused the documents of Nuna Baby Essentials, Inc. to be searched diligently for information and documents responsive to this Special Order, and that the answers to the individual requests of the Special Order (including the documents produced with this response) are complete and correct responses to the Special Order to the best of my knowledge and belief.



Steven G Gerhart
Vice President, Product Development
Nuna Baby Essentials, Inc.

August 26, 2024