



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

JUL 22 2019

Evan Mills
Compliance Engineer
Alloy Custom Products, LLC
Lafayette, IN 47905

Reference No. 19-0046

Dear Mr. Mills:

This letter is in response to your April 5, 2019, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to Specification MC-338 cargo tank motor vehicle (CTMV) rear-end tank protection requirements. In § 178.338-10(c), there are two options that allow a person to comply with rear-end tank protection for an MC-338 CTMV. The first option is to fully comply with the requirements of § 178.338-10(c)(1). The second option in § 178.338-10(c)(2) directs a person to comply with the requirements found in § 178.345-8(b).

You believe the reference to § 178.345-8(b) is incorrect because it refers to bottom damage protection and not rear-end tank protection. You believe the correct reference should be § 178.345-8(d).

Your understanding is correct that the reference found in § 178.338-10(c)(2) should be § 178.345-8(d). The Research and Special Programs Administration (RSPA), now the Pipeline and Hazardous Materials Safety Administration (PHMSA), published a Notice of Proposed Rulemaking, HM-183C [60 *FR* 17398] on April 5, 1995, which proposed to revise the requirements for rear-end tank protection devices for MC-331 and MC-338 CTMVs to allow DOT 400 series rear-end tank protection devices as an alternative. In final rule HM-213 [68 *FR* 19258], published April 18, 2003, RSPA added the provision to allow rear-end tank protection devices to conform with § 178.345-8; however, this new provision was added with the incorrect reference to paragraph (b). In final rule HM-213 [68 *FR* 52363], published on September 3, 2003, RSPA addressed the error in the preamble yet, RSPA inadvertently left the incorrect reference to paragraph (b).

PHMSA is aware of this error and will address the error in a future rulemaking.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

Baker
19-0046

January, Ikeya CTR (PHMSA)

From: Baker, Yul (PHMSA)
Sent: Friday, April 05, 2019 1:42 PM
To: January, Ikeya CTR (PHMSA); Dodd, Alice (PHMSA)
Cc: DerKinderen, Dirk (PHMSA); Kelley, Shane (PHMSA)
Subject: FW: Request for interpretation regarding
Attachments: MC-338 Rear End Protection - Request for Clarification.pdf

Ikeya / Alice,

Can you please enter this as a formal request for a letter of interpretation and assign it to me to complete.

V/r
Mr. Yul Brenner Baker Jr.
Transportation Specialist (Standards and Rulemaking Division)
Office of Hazardous Materials Safety (OHMS)
Pipeline and Hazardous Materials Safety Administration (PHMSA)
E21-350
Office number: 202-493-0867

From: Evan Mills <evan.mills@cryoindsolutions.com>
Sent: Friday, April 05, 2019 1:21 PM
To: Baker, Yul (PHMSA) <yul.baker@dot.gov>
Cc: DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>; Isaac Zimmer <isaac.zimmer@cryoindsolutions.com>
Subject: RE: Request for interpretation regarding

Mr. Yul Brenner Baker Jr.,

Our request is for clarification on which paragraph in 178.345-8 can be complied with for MC338 rear end protection.

It might be considered more of a clarification just as you stated in your email earlier that the appropriate reference should be 178.345-8(d) and not (b). Possibly making note in the interpretation that this will be remedied in a future ruling if you are able to present it this way.

Evan

From: Baker, Yul (PHMSA) <yul.baker@dot.gov>
Sent: Friday, April 5, 2019 11:49 AM
To: Evan Mills <evan.mills@cryoindsolutions.com>
Cc: DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>; Isaac Zimmer <isaac.zimmer@cryoindsolutions.com>
Subject: RE: Request for interpretation regarding

Mr. Mills,

Can you provide me your specific interpretation request regarding MC 338 CTMVs? I want to make sure I provide a specific and accurate response to your request.

V/r
Mr. Yul Brenner Baker Jr.

Transportation Specialist (Standards and Rulemaking Division)
Office of Hazardous Materials Safety (OHMS)
Pipeline and Hazardous Materials Safety Administration (PHMSA)
E21-350
Office number: 202-493-0867

From: Evan Mills <evan.mills@cryoindsolutions.com>
Sent: Friday, April 05, 2019 11:17 AM
To: Baker, Yul (PHMSA) <yul.baker@dot.gov>
Cc: DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>; Isaac Zimmer <isaac.zimmer@cryoindsolutions.com>
Subject: RE: Request for interpretation regarding

Hi Mr. Yul Brenner Baker Jr.,

We appreciate your timely response. Your email will be sufficient for our purposes to continue manufacturing MC338 specification cargo tank motor vehicles.

However, we believe the industry would benefit from an official interpretation being published. It is unclear how long it will take before the regulations can be corrected.

Our request is for the letter of interpretation to be answered and published during this transition phase.

Regards,

Evan Mills
Compliance Engineer
Alloy Custom Products, LLC

From: Baker, Yul (PHMSA) <yul.baker@dot.gov>
Sent: Friday, April 5, 2019 10:55 AM
To: Evan Mills <evan.mills@cryoindsolutions.com>
Cc: DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>
Subject: Request for interpretation regarding

Mr. Mills,

We received your request for interpretation regarding the requirements for MC 338 CTMVs, specifically for accident damage protection. We are aware of the error in § 178.338-10(c)(2) and we are revising this reference in an upcoming editorial rulemaking that is being drafted. The correct reference in § 178.338-10 (c)(2) should be § 178.345-8(d) and not § 178.345-8(b).

If you have any questions or if you still need a letter of interpretation regarding this matter, please let me know.

V/r
Mr. Yul Brenner Baker Jr.
Transportation Specialist (Standards and Rulemaking Division)
Office of Hazardous Materials Safety (OHMS)
Pipeline and Hazardous Materials Safety Administration (PHMSA)
E21-350
Office number: 202-493-0867



Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHHH-10)
1200 New Jersey Ave., SE East Building, 2nd Floor
Washington, DC 20590

Mr. Kelley,

Please accept this letter as an official request for an interpretation regarding the requirements for rear-end tank protection of an MC-338 specification cargo tank motor vehicle. As it is currently written in 178.338-10(c) there are two options given for rear-end tank protection device compliance. The first option is a rear-end tank protection device complying with 178.338-10(c)(1). The alternative listed is 178.338-10(c)(2) which points to a rear-end tank protection device complying with 178.345-8(b).

However, when referencing 178.345-8(b), this paragraph is referring to a bottom damage protection device and not a rear-end tank protection device. It is our belief along with representatives from FMCSA that the intended paragraph for rear-end protection device compliance should be 178.345-8(d) *rear-end tank protection*.

It is also important to note the reference made for MC-331 cargo tank motor vehicles rear-end tank protection is 178.345-8(d).

Please confirm which paragraph in 178.345-8 is acceptable for rear-end protection of MC-338 specification cargo tank motor vehicles.

Regards,

A handwritten signature in black ink that reads "Evan Mills". The signature is written in a cursive, flowing style.

Evan Mills
Compliance Engineer
Alloy Custom Products, LLC
Lafayette, IN 47905