



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

MAY 01 2019

Christopher Wagner  
Director of Safety Compliance  
AmeriGas Propane  
460 N. Gulph Road  
King of Prussia, PA 19406

Reference No. 18-0129

Dear Mr. Wagner:

This letter is in response to your October 11, 2018, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to labeling exemptions provided by special permit. Specifically, you question a citation you were issued despite being party to Special Permit (SP) 13544, which states that you are exempt from “§ 172.401 in that each cylinder must be labeled.”

You indicate that during a roadside inspection you were cited for a violation of § 172.407 because a flammable gas warning label on a cylinder had faded from red to yellow, thus no longer meeting the hazard label specifications. You further state that your company routinely retrieves DOT 4BA240 cylinders, which you find in varying conditions (e.g., bearing DOT labels that are worn, damaged, discolored or unreadable, or in conditions that prohibit you from permanently affixing a label), from propane exchange facilities. Therefore, you seek confirmation of your understanding that SP 13544 allows you to transport cylinders that are labeled improperly.

The answer is yes. It is the opinion of this Office that while not explicitly stated, the intent of SP 13544 is to authorize the transportation of cylinders that are not be properly marked or labeled when they are collected for the purpose of reconditioning, reuse, or disposal as part of a cylinder collection operation like the one you described. Note that relief from marking and labeling requirements similar to the exemptions provided in SP 13544 have been added to the HMR under Special Provision N95 for certain shipments of “UN1075, Liquefied petroleum gas” and “UN1978, Propane” and may render party status to SP 13544 unnecessary.

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

**Dodd, Alice (PHMSA)**

Casey  
18-0129

**From:** INFOCNTR (PHMSA)  
**Sent:** Thursday, October 11, 2018 1:19 PM  
**To:** Hazmat Interps  
**Subject:** FW: Special Permit 13544 Interpretation - Violation  
**Attachments:** Response to DataQ 2137735.docx; DOT-SP 13544 Authorization & Party Status.pdf

Dear Alice and Ikeya,

Below is a request for a letter of interpretation with attached additional information.

Thanks,  
Jonathon, HMIC

**From:** Wagner, Christopher J. [mailto:Christopher.Wagner@amerigas.com]  
**Sent:** Thursday, October 11, 2018 10:19 AM  
**To:** PHMSA HM InfoCenter <PHMSAHMInfoCenter@dot.gov>  
**Subject:** Special Permit 13544 Interpretation - Violation

Good morning,

One of our drivers was recently cited for violations of the Hazmat Regulations during a roadside inspection. DataQ requests were entered for the two violations as it is believed that they were cited in error. Attached is the response from the citing agency where in one violation was removed, but the second was upheld.

AmeriGas holds party status to DOT Special Permit 13544. Under the allowance of this permit, 4BA240 cylinders that are being returned to a facility for processing are not subject to the labeling requirements under 172.301 and 172.401 as long as the vehicle is properly placarded denoting the hazard contained within the confines of the vehicle.

As propane containers that are retrieved from cylinder exchange locations are in varying states of cleanliness at the time of pick-up it is generally not possible to permanently affix a label of any type on the container until cleaned and or repainted. This is the basis for the Special Permit. Additionally, existing labels can be worn, weathered, damaged, or missing. In the case cited above, the officer identified one cylinder with a label where the color had faded. This likely occurred on a barbecue cylinder that had been stored outside in sunlight for any number of days months or years, prior to being returned to a Propane Retail Exchange Cage, for exchange with a new or refurbished cylinder with proper labeling. As a point of note, our vehicles only carry propane containers and are only placarded with 1075, Class 2 Flammable Gas placarding.

In the officer's note he states that a red label had faded to the point of appearing yellow which could be confused with Oxygen, even though it was a flammable gas label on a propane cylinder, enclosed in a compartment of a vehicle that was placarded properly as per the requirements. The officer additionally noted that another cylinder may have been labeled with a diamond that he approximated (no formal measurement performed) was 1" as opposed to the required 1.25". In both instances these cylinders were being returned to our facility for inspection and processing and we feel in accordance with the allowance under our special permit. No issues were identified with any outbound cylinders that were on the truck as all were in compliance with the labeling requirements under 172.301 and 172.401 (by reference 172.407, 172.417, & CGA C-7).

I request that you review the above and attached and supply your interpretation of our operation so that I may resubmit the DataQ for this violation in pursuit of dismissal.

Please contact me with any questions of need for clarification. Thank you for your time and assistance.

Christopher J Wagner  
Director of Safety Compliance  
AmeriGas Propane  
460 N. Gulph Road  
King of Prussia, PA 19406  
O: 610-337-7000; 1292  
C: 610-308-3822

# CARRIER DATAQ #2137735 CHALLENGING VIOLATIONS

## WRITTEN UNDER 172.202(a)(1) AND 172.407

### 1. VIOLATION WRITTEN:

#### 172.202(a)(1) No or improper Identification Number:

Shipping papers shows "UN1075, Propane", the correct UN# for Propane is UN1978. UN1075 is valid only for "Petroleum gases, liquefied or Liquefied petroleum gas"

#### CARRIER CHALLENGE:

The challenge is based on 49CFR172.102 Special Provision 19

Open - Pending Officer Comments	172.202(a)(1)	Improper shipping name		
	Explanation: In accordance with Special Provision 19 Propane is permitted to be transported domestically under UN 1075 labeled as Propane			
10/01/2018 10:08 AM	<u>1075 Special Provision.docx</u>	Special Provision 19	application/vnd.openxmlformats-officedocument.wordprocessingml.document	15889

**Special Provision 19.** For domestic transportation only, the identification number "UN1075" may be used in place of the identification number specified in column (4) of the § 172.101 table. The identification number used must be consistent on package markings, shipping papers and emergency response information.

#### RESPONSE:

According to PHMSA and special provision 19, referred to under column 7 of the Hazardous Material Table for UN1978 Propane, 2.1, It is permissible for Propane to be marked as 1075 providing that the shipping papers, packaging markings and ERG are all displaying Propane and all the identification numbers display 1075. Which I believe they were.

#### CONCLUSION:

This documented violation is in error, and I will amend and remove this violation from ASPEN Report WI2073003270 and re-transmit the report.

### 2. VIOLATION WRITTEN:

#### 172.407 Label does not meet specifications:

1 cylinder has faded labels, faded from red to yellow and another has an improper size CGA label. Both cylinders are return & have residual only.

#### CARRIER CHALLENGE:

The challenge is based on their special permit 13544 that they are claiming permits them to transport **improperly** or unlabeled cylinders for processing and provided a copy of their Special Permit.

Violation	Violation Description
172.407	Label does not meet specifications
Explanation: AmeriGas is party to a special permit that allows the transport of improperly or unlabeled cylinders back to our facilities for processing. This permit is DOT-SP 13544. It has an expiration date of June 30, 2019 and was in the vehicle permit binder at the time of the inspection.	

DOT-SP 13544  
(FIFTH REVISION)

4. REGULATIONS FROM WHICH EXEMPTED: 49 CFR § 172.301(a) in that the proper shipping name and identification number need not be marked on each package, § 172.301(c) in that marking of the special permit number on each package is not required and § 172.401 in that each cylinder must be labeled, except as provided herein.

#### RESPONSE:

Special Permit section 4 "REGULATION FROM WHICH EXEMPTED", does not provide the carrier an exemption from 172.401(a)(2); the misrepresentation of a hazardous material in a package by improper labeling.

**172.401 Prohibited labeling.**

(a) Except as otherwise provided in this section, no person may offer for transportation and no carrier may transport a package bearing a label specified in this subpart unless:

(2) The label represents a hazard of the hazardous material in the package

One cylinder's Red Flammable square on point diamond had faded from red to yellow which is representative of an Oxidizer or Oxygen.

Nor does it provide any exemption from the label color specifications under 172.407(d)(1) & 172.417(b), or the size requirements of the CGA C-7 label permitted under 172.400a(a)(1)(ii).

**172.407 Label specifications.**

(d) Color.

(1) The background color on each label must be as prescribed in 172.411 through 172.448 of this subpart, as appropriate.

**172.417 FLAMMABLE GAS label.**

(a) Except for size and color, the FLAMMABLE GAS label must be as follows:



(b) In addition to complying with 172.407, the background color on the FLAMMABLE GAS label must be red.

*The Flammable Gas square on point (diamond) label on the CGA C-7 label was no longer red but yellow.*

**172.400a Exceptions from labeling.**

(a) Notwithstanding the provisions of 172.400, a label is not required on

(1) A Dewar flask meeting the requirements in § 173.320 of this subchapter or a cylinder containing a Division 2.1, 2.2, or 2.3 material that is durably and legibly marked in accordance with CGA C-7, Appendix A (IBR; see 171.7 of this subchapter). Notwithstanding this exception, overpacks must be labeled (see 173.25 of this subchapter).

(i) Not overpacked; and

(ii) Durably and legibly marked in accordance with CGA C-7, Appendix A (IBR; see 171.7 of this subchapter).

**171.7(n)(7) (7) CGA C-7, Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A, issued 2004 (8th Edition), into 172.400a**

**CGA C-7—2011**

**GUIDE TO PREPARATION OF PRECAUTIONARY LABELING AND MARKING OF COMPRESSED GAS CONTAINERS NINTH EDITION**

**2 SCOPE**

Appendix A illustrates the basic marking consisting of DOT or TC proper shipping name; identification number; and 30-mm **(1.25-in) diamond**, which is permitted under conditions authorized by DOT and TC regulations as an alternative to the DOT/TC 100-mm (3.9-in) diamond label and marking [2, 3].

*One cylinder had a red diamond (square on point) that was visually less than the specified 1.25" as I compared them to the other cylinders. The Diamond was approximately 1 inch on each side.*

**This special permit does not grant any exemptions not directly expressed therein, and only exempts the carrier from the following marking and labeling requirements:**

- The proper shipping name and identification number on the package (cylinder), per 172.301(a).
- The Special Permit number marked on the package (cylinder), required of 172.301(c) and
- The requirements that the packages must be labeled.

The exemption from the requirement that the cylinders need to be properly labeled does not create or imply that any labels that are displayed, even though not required, can be improper or misleading. This was also addressed by PHMSA in an Interpretation (12-0146), in 2012 in their answering of question 2:

**Q2. *Is it permissible to display a hazard label on a limited quantity package offered for transportation and transported by surface modes?***

**A2. *The answer is yes, provided the label meets the applicable requirements of 49 CFR Part 172, Subpart E. No person may offer for transportation and no carrier may transport a package bearing a label, unless the package contains a hazardous material and the label represents the hazard of the material contained in the package.***

While this interpretation speaks to a limited quantity label, I believe the interpretation and the DataQ are conceptually similar and therefore this interpretation can be expanded to address any label that is permissibly applied.

**CONCLUSION:**

I do not believe this documented violation to be an error, and see no need to remove it from the report.



U.S. Department  
of Transportation

East Building, PHH - 30  
1200 New Jersey Avenue, Southeast  
Washington, D.C. 20590

**Pipeline and Hazardous  
Materials Safety Administration**

SPECIAL PERMIT AUTHORIZATION

DOT-SP 13544

**EXPIRATION DATE: June 30, 2019**

GRANTEE: AmeriGas Propane LP  
King of Prussia, PA

In response to your June 25, 2015 application for renewal of DOT-SP 13544, the grantee status to DOT-SP 13544 for AmeriGas Propane LP is hereby renewed in accordance with 49 CFR § 107.109.

Copies of this special permit may be obtained by accessing the Office of Hazardous Materials Safety Homepage at [http://hazmat.dot.gov/sp\\_app/special\\_permits/spec\\_perm\\_index.htm](http://hazmat.dot.gov/sp_app/special_permits/spec_perm_index.htm). The most recent revision of the special permit supersedes all previous revisions of the special permit. Photo reproductions and legible reductions of this special permit are permitted. Any alteration of this special permit is prohibited.

If you have questions regarding this action please call the Office of Hazardous Materials Special Permits and Approvals at (202) 366-4535.

Issued in Washington D.C. on **July 9, 2015**.

for Dr. Magdy El-Sibaie  
Associate Administrator for Hazardous Materials Safety

August 5, 2013



U.S. Department  
of Transportation

East Building, PHH-30  
1200 New Jersey Avenue S.E.  
Washington, D.C. 20590

**Pipeline and Hazardous  
Materials Safety Administration**

DOT-SP 13544  
(FIFTH REVISION)

(FOR RENEWAL, SEE 49 CFR § 107.109)

1. GRANTEE: (See individual authorization letter)
2. PURPOSE AND LIMITATIONS:
  - a. This special permit authorizes the transportation in commerce of DOT Specification 4BA240 cylinders containing liquefied petroleum gas (LPG) and/or residue of LPG without hazard warning labels when transported by a motor vehicle that is placarded. This special permit provides no relief from the Hazardous Materials Regulations (HMR) other than as specifically stated herein. The most recent revision supersedes all previous revisions.
  - b. The safety analyses performed in development of this special permit only considered the hazards and risks associated with transportation in commerce. The safety analyses did not consider the hazards and risks associated with consumer use, use as a component of a transport vehicle or other device, or other uses not associated with transportation in commerce.
  - c. Unless otherwise stated herein, this special permit consists of the special permit authorization letter issued to the grantee together with this document.
3. REGULATORY SYSTEM AFFECTED: 49 CFR Parts 106, 107 and 171-180.
4. REGULATIONS FROM WHICH EXEMPTED: 49 CFR § 172.301(a) in that the proper shipping name and identification number need not be marked on each package, § 172.301(c) in that marking of the special permit number on each package is not required and § 172.401 in that each cylinder must be labeled, except as provided herein.



5. BASIS: This special permit is based on the application of Carlson Logistics dated March 7, 2013 and additional information dated July 23, 2013, submitted in accordance with § 107.105 and the public proceeding thereon.
6. HAZARDOUS MATERIALS (49 CFR § 172.101):

<b>Hazardous Materials Description</b>			
<b>Proper Shipping Name</b>	<b>Hazard Class/ Division</b>	<b>Identification Number</b>	<b>Packing Group</b>
Liquefied petroleum gas	2.1	UN1075	N/A
Propane	2.1	UN1978	N/A

7. SAFETY CONTROL MEASURES:
- a. PACKAGING - Prescribed packagings are DOT Specification 4BA240 steel cylinders.
- b. OPERATIONAL CONTROLS:
- (1) The cylinders must be transported on a motor vehicle that is placarded with "FLAMMABLE GAS" placards.
- (2) Shipping papers must reflect a correct current accounting of all cylinders both full and expended.
- (3) Cylinders must be secured in the vehicle in accordance with § 177.834(a).
8. SPECIAL PROVISIONS: A current copy of this special permit must be maintained at each facility where the package is offered for transportation.
9. MODES OF TRANSPORTATION AUTHORIZED: Motor vehicle.
10. MODAL REQUIREMENTS: None as a requirement of this special permit.

11. COMPLIANCE: Failure by a person to comply with any of the following may result in suspension or revocation of this special permit and penalties prescribed by the Federal hazardous materials transportation law, 49 U.S.C. 5101 et seq:
- o All terms and conditions prescribed in this special permit and the Hazardous Materials Regulations, Parts 171-180.
  - o Persons operating under the terms of this special permit must comply with the security plan requirement in Subpart I of Part 172 of the HMR, when applicable.
  - o Registration required by § 107.601 et seq., when applicable.

Each "Hazmat employee", as defined in § 171.8, who performs a function subject to this special permit must receive training on the requirements and conditions of this special permit in addition to the training required by §§ 172.700 through 172.704.

No person may use or apply this special permit, including display of its number, when the special permit has expired or is otherwise no longer in effect.

Under Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)- 'The Hazardous Materials Safety and Security Reauthorization Act of 2005' (Pub. L. 109-59), 119 Stat. 1144 (August 10, 2005), amended the Federal hazardous materials transportation law by changing the term "exemption" to "special permit" and authorizes a special permit to be granted up to two years for new special permits and up to four years for renewals.

**August 5, 2013**

12. REPORTING REQUIREMENTS: Shipments or operations conducted under this special permit are subject to the Hazardous Materials Incident Reporting requirements specified in 49 CFR §§ 171.15 - Immediate notice of certain hazardous materials incidents, and 171.16 - Detailed hazardous materials incident reports. In addition, the grantee(s) of this special permit must notify the Associate Administrator for Hazardous Materials Safety in writing, of any incident involving a package, shipment or operation conducted under terms of this special permit.

Issued in Washington, D.C.

*Miane Lavalle*

for Dr. Magdy El-Sibaie  
Associate Administrator for Hazardous Materials Safety

Address all inquiries to: Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Washington, D.C. 20590. Attention: PHH-31.

Copies of this special permit may be obtained by accessing the Hazardous Materials Safety Homepage at [http://hazmat.dot.gov/sp\\_app/special\\_permits/spec\\_perm\\_index.htm](http://hazmat.dot.gov/sp_app/special_permits/spec_perm_index.htm)  
Photo reproductions and legible reductions of this special permit are permitted. Any alteration of this special permit is prohibited.

PO: bmoore