

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

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**Hazardous Materials Safety
Law Division**

October 16, 2014

Ms. Kristie Rink
Bulldog Fire & Safety
P.O. Box 2492
Loganville, GA 30052

Dear Ms. Rink:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is in receipt of your August 12, 2014 letter regarding Florida State requirements and requalification approvals issued by PHMSA.

As delegated by the Secretary of Transportation, PHMSA has the authority to prescribe regulations for the safe transportation of hazardous materials in commerce, including, *inter alia*, the maintenance, repair, and testing of packagings used to transport hazardous materials in commerce. *See* 49 U.S.C. § 5107; 49 C.F.R. § 1.97. Under this authority, PHMSA may issue an approval called a Requalifier Identification Number (RIN) authorizing a person or entity to requalify DOT-specification cylinders in accordance with the Hazardous Materials Regulations (HMR; 49 C.F.R. Parts 171-180). *See* 49 C.F.R. §§ 107.705, 107.805, 180.205.

In order to qualify for a RIN approval, an applicant must be fit to conduct the approved activity (e.g., operable hydrostatic retest equipment, trained personnel). 49 C.F.R. § 107.709. In order for PHMSA to consider and/or grant an application for a RIN approval, we must be able to evaluate the applicant's fitness, by reviewing its requalification facilities, equipment, practices, and personnel. If a RIN approval is not needed, such as when an approval-holder is not performing requalification activities, PHMSA may terminate a RIN approval. 49 C.F.R. § 107.713. For these reasons, PHMSA does not consider and/or grant RIN approvals to entities that do not perform requalification activities.

Furthermore, PHMSA may only exercise its authority over entities that are subject to our jurisdiction. In general, PHMSA has jurisdiction over entities that perform activities that are subject to the HMR. This includes entities that perform requalification activities or otherwise affect the transportation of hazardous materials in commerce. As such, PHMSA may grant RIN approvals to entities that will operate as requalifiers, but cannot grant RIN approvals to entities that do not perform these activities. *See generally*, 49 C.F.R. §§ 107.805, 180.205.

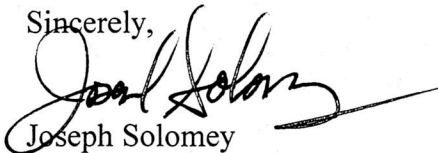
Your letter indicates that Bulldog Fire & Safety requires a RIN approval in order to obtain a dealer's license under Fla. Admin. Code Ann. r. 69A-21.201(12) and that your company "does not perform any hydrostatic testing on any cylinders" and "do[es] not have a facility to be inspected by the Department of Transportation." Since your company will not perform requalification activities and is not equipped to do so, PHMSA cannot issue Bulldog Fire & Safety a RIN approval.

You may wish to apply to PHMSA for a preemption determination, pursuant to 49 U.S.C. § 5125 and 49 C.F.R. Part 107, Subpart C. Under certain conditions, a state requirement may be preempted, or superseded by, a federal requirement. The standards for preemption and the requirements for filing a request for determination are outlined in 49 C.F.R. §§ 107.202, 107.203, and 107.205. Generally, any person who is directly affected by a requirement of a state may apply to PHMSA's Chief Counsel for a determination by providing the following:

- 1) The text of the state requirements;
- 2) The relevant federal requirements;
- 3) An explanation of why the state requirements should be preempted under the standards outlined in 49 C.F.R. § 107.202;
- 4) An explanation of how you are affected by the state requirements; and
- 5) A certification that you have mailed a copy of your application for a determination to the state and the name and address to which you directed that notice.

If you have any further questions, please do not hesitate to contact this office.

Sincerely,


Joseph Solomey
Senior Assistant Chief Counsel

CERTIFIED MAIL – RETURN RECEIPT REQUESTED