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March 12, 2010

The Honorable Cynthia L. Quarterman
Administrator
Pipeline and Hazardous Material Safety Administration
c/o Docket Management System
U.S. Department of Transportation
Dockets Operations, M-30
Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Docket No. PHMSA-20009-0095
RIN 2137-AE44

RE: Hazardous Materials: Transportation of Lithium Batteries

Dear Administrator Quarterman:

The Retail Industry Leaders Association (RILA) and its members are pleased to provide comments on the Notice of Proposed Rulemaking (NPRM) entitled Hazardous Materials: Transportation of Lithium Batteries.

By way of background, RILA is a trade association of the largest and most successful companies in the retail industry. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales. RILA members operate more than 100,000 stores, manufacturing facilities and distribution centers, have facilities in all 50 states, and provide millions of jobs domestically and worldwide.

RILA continues to support the work of the Pipeline and Hazardous Materials Safety Administration (PHMSA) in its efforts to enhance all aspects of safety involving the transportation of lithium batteries. RILA and its members endorse regulations that ensure safe and secure transportation of lithium batteries. We support PHMSA's effort to better understand the impacts of lithium batteries as a part of the global supply chain. However, upon reviewing the NPRM, we believe it does not consider several significant impacts on the complex supply chain networks that transport lithium batteries.

First and foremost, RILA's membership does not find the proposed mandatory compliance date of 75 days after the date of publication practical. RILA members operate more than 100,000 retail outlets, and nearly all of these have employees who prepare lithium batteries for shipment. Unlike many of the other affected parties, retail outlets do not commonly have dedicated shipping professionals at each location. It is unrealistic that all involved employees could be effectively trained within 75 days, as required by the regulation. Further complicating this short compliance deadline is the

inclusion of peak times in the retail business cycle such as the back-to-school and holiday seasons, during which retailers have a uncompromising schedule that make it difficult to implement new training programs. Clear and concise training, not to mention process development, is a must for successful compliance. Given the proposed changes, the required training simply cannot be achieved in such a short time. Therefore, RILA supports a minimum 12 month implementation period, if not longer, for a change of this magnitude.

RILA members are also concerned that PHMSA's Cost Benefit and Regulatory Flexibility Analysis fails to notice the proposed rule's impact on the retail industry. PHMSA's analysis primarily focuses on costs associated with packaging and labeling, yet it does not consider other impacts such as supply chain restructuring, inventory costs and reverse logistics. RILA members believe the analysis currently provided by the NPRM provides a misleading and incomplete picture of the proposed rule's impact on commerce. Thus, PHMSA should consider the impact this rulemaking will have on the economy and the many affected industries.

In addition, when revising standards with a global impact, RILA supports a uniform harmonization of U.S. regulations with international standards. Given the international nature of RILA's membership and their suppliers, compliance would be more quickly achievable should all applicable regulations align with the International Civil Aviation Organization (ICAO) Technical Instructions on the Safe Transport of Dangerous Goods by Air. Failure to harmonize with international standards would create confusion, decrease compliance, and may negatively impact safety throughout the supply chain.

With these issues to be considered, RILA members would like PHMSA to consider the broader impacts of this NPRM across industry. In previous correspondence, RILA requested a change to an Advance Notice of Proposed Rulemaking and the formation of an Advisory Council of industry experts. This would ensure significant industry input and that the regulation improves transportation safety with minimal negative impacts on commerce and global supply chains. RILA shares PHMSA's goal of strong, effective regulations and we welcome more active involvement in this rulemaking.

RILA is thankful for the opportunity to comment on this important rulemaking. We look forward to working with PHMSA to ensure the safe transportation of lithium batteries.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Kolb". The signature is fluid and cursive, with the first name "Kelly" written in a larger, more prominent script than the last name "Kolb".

Kelly Kolb
Vice President, Global Supply Chain Policy