STATEMENT OF

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HEARING ON SECURING THE NATION'S RAIL AND OTHER SURFACE TRANSPORTATION NETWORKS

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INTRODUCTION

On behalf of CSX Transportation, Inc. ("CSXT") and the Association of American Railroads ("AAR"), thank you for the opportunity to discuss the Freight Rail Industry's (the "Industry") efforts to enhance rail security.

CSXT and the Industry are deeply committed to rail security. We recognize that the security environment in this country has changed dramatically in recent years – there are new threats that demand new security considerations, and a new way of thinking about freight rail safety and security. Immediately after September 11, 2001, and well before the creation of TSA, the Industry moved rapidly to address the new threat environment. It is well documented what actions CSXT and the Industry have voluntarily taken and how we have taken the initiative to respond to the new security paradigm in a post 9/11 world. And much has been done since the initial rail efforts after September 11th in 2001. Industry security plans, a Surface Transportation Information Sharing and Analysis Center, an AAR Operations Center feeding information to an industry Rail Alert Network, annual desktop exercises, and the E-Rail Safe contractor credentialing program – all are voluntary industry initiatives that have enhanced the security of the nation's rail network.

COMPLIANCE WITH GOVERNMENT REGULATIONS AND ACTION ITEMS

CSXT recognizes the Transportation Security Administration's ("TSA") role and the actions the Federal Government has taken to enhance freight rail security since 2001. Within the federal government, DHS and DOT share responsibility for securing the freight rail system. Prior to September 11, 2001, the Department of Transportation ("DOT") was the primary federal agency responsible for regulating freight rail transportation. With the creation of TSA in November 2001 and TSA's Freight Rail Security Program in 2003, the DOT, Department of Homeland Security ("DHS"), and TSA have worked diligently to identify freight rail security needs and coordinate various efforts to enhance freight rail security. Specifically, DOT, DHS, and TSA have enacted extensive formal regulations aimed at strengthening freight rail security. CSXT fully supports the goals of these regulations and is committed to full compliance.

Formal federal agency reaction to freight rail security risks inherent in the post 9/11 world began as a cooperative and collaborative effort between the government and the Industry. Immediately after September 11, 2001, and before the creation of TSA, the Industry, in consultation with security experts and federal agencies, implemented a rail security plan which included network-wide risk assessments and asset specific countermeasures, with each railroad implementing over 50 countermeasures, based on people, process, and technology. This concept of escalating alert levels, borrowed from US Military Defense Condition (DefCon) protocols, is also used by TSA today.

Experience with the voluntary plans of the largest railroads led to adoption of formal requirements for all railroads. In September 2003, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued rules requiring any railroad that handles hazardous materials to adopt a security plan and engage in training of its hazardous material employees. PHMSA's security planning rules require railroads to develop and implement security plans that address security risks and vulnerabilities related to the transportation of hazardous materials.

PHMSA's security planning rules require railroads to develop and implement a security plan based on an assessment of possible transportation security risks. The plan must address personnel security, unauthorized access, and en route security. The security plan must be based on an assessment of possible transportation security risks and must include at a minimum, an assessment of possible transportation security risks and appropriate measures identified by risk assessments. All security plans are required to be in writing, updated as necessary to reflect changing circumstances and must be retained for as long as the plan remains in effect.

PHMSA also issued rules that require security awareness training for hazardous materials employees. Railroads must provide "in-depth" security training and "security awareness" training to employees. In-depth security training must include security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure. Security awareness training requires that each employee receive training that provides an

awareness of security risks associated with the transportation of hazardous materials and methods designed to enhance transportation security, including how to recognize and respond to possible security threats.

For CSXT, compliance with these rules was relatively straightforward. With a comprehensive security plan that had been in place for several years, we reviewed our existing plan in light of the regulations and made some modifications as needed to ensure that it met the new regulatory requirements.

Also in 2003, CSXT began participating in the U.S. Customs and Border Protection's voluntary C-TPAT (Customs-Trade Partnership Against Terrorism) program. C-TPAT is a voluntary government-private sector partnership to strengthen and improve U.S. border security and the security of the international supply chain. C-TPAT increases security measures, practices and procedures throughout all sectors of the international supply chain.

As a participating member of C-TPAT, this supply chain security program for international cargo is in place at CSXT's US-Canadian border crossing points. It requires adherence to a variety of security-related performance measures in order to achieve certification in the program.

In 2003, CSXT also began working on compliance with United States Coast Guard's regulations under the Maritime Security Act of 2002. These extensive rules

require comprehensive port threat and vulnerability assessments, security plans and security measures. CSXT has facilities in Maryland, Ohio, and Florida that fall under these regulations, and that undergo regular inspection and evaluation by the U.S. Coast Guard to ensure compliance.

In 2006, TSA and DOT began to give heightened attention to the transportation of certain ultra-hazardous commodities such as toxic inhalation hazard ("TIH") materials. They began by developing twenty-four voluntary security action items in a series of consultative meetings between the rail industry, TSA and other interested Federal agencies. These voluntary security action items, adopted in June 2006, were to be followed as recommended best practices of rail carriers handling these particularly sensitive products.

CSXT was a strong proponent of the cooperative process that led to the original set of guidelines, and continues to support voluntary cooperation. This original set of voluntary action items generally focused on three main areas: (i) system security, (ii) access control, (iii) and en-route security.

On November 21, 2006, TSA issued further voluntary "action items" for the handling of TIH. TSA Supplemental Security Action Item No. 1 concerns the transportation of TIH and generally focuses on (i) enhancing access control and security awareness for rail facilities in federally designated High-Threat Urban Areas ("HTUAs"), (ii) monitoring the movement of TIH cars in HTUAs to substantially reduce dwell and

transit time, and (iii) eliminating unattended TIH cars in HTUAs. Unlike the first set of action items, these were adopted by TSA unilaterally and without further dialogue with the rail Industry.

In January 2007, the USCG and TSA issued new regulations requiring that workers who enter regulated maritime facilities must obtain a Transportation Worker Identification Credential ("TWIC"). The TWIC requirement applies to railroad employees who enter and work for CSXT at any regulated maritime facility in the United States. Train and Engine crews, Mechanical and Maintenance of Way personnel, Railroad managers, Special Agents and any other railroad employee entering these covered maritime facilities must have a TWIC.

On February 12, 2007, TSA again unilaterally issued further voluntary "action items" for the handling of TIH. TSA Supplemental Security Action Item No. 2 provides further guidance on the recommended scope and procedures for voluntarily conducted background checks.

Over time, TSA saw a need to move to a more formal interaction with the Industry over the transportation of certain ultra hazardous commodities such as TIH materials. These voluntary guidelines were gradually supplanted by progressively more active formal regulations.

In November 2008, the TSA issued final regulations imposing new "chain of custody" obligations regarding the handling of TIH cars in interchanges, i.e., where one railroad transfers a TIH car to another railroad. The regulation required railroads to modify their routing operations to ensure that only attended interchanges are used for transporting TIH. This regulation also imposed similar requirements for the transfer of custody from shipper to railroad and from railroad to certain receivers at destination.

When TSA issued its final Chain of Custody rules in November 2008, it initially gave the rail industry just 30 days to implement new interchange practices and to train tens of thousands of employees on the new requirements. CSXT as well as the Industry persuaded TSA to extend the compliance date to April 1, 2009, thus enabling the Industry to adapt its operations without conflict with the new regulations. CSXT and the Industry greatly appreciate TSA's willingness to meet with us, discuss the practical implementation challenges we faced, and to give the Industry time it needed to do the job properly.

Additionally, TSA's final rule required railroads to designate a rail security coordinator ("RSC") and at least one alternate RSC to be available on a 24-hour, seven days per week basis to serve as the primary contact for receipt of intelligence information and other security-related activities from TSA. The final rule also required Class I railroads to provide location and shipping information to TSA within five minutes of an inquiry if the request concerns only one car and within thirty minutes if the request concerns two or more rail cars.

Also in November 2008, the DOT issued final rules requiring railroads to perform a safety and security risk analysis for routes used to transport certain hazardous materials and to select the safest and most secure routes, using a provided list of 27 risk factors. Congress, through the good work and guidance of this Committee, mandated this approach in 2007 in the Implementing Recommendations of the 9/11 Commission Act.

The DOT routing regulation (adopted by PHMSA and enforced by FRA) represents a commendable effort to address the public's routing concerns regarding the transportation of certain highly hazardous materials. DOT's routing rule requires railroads to compile annual data on certain shipments of explosive, TIH, and radioactive materials for use in making routing decisions. Railroads must use this data to analyze safety and security risks along routes used to transport these materials, assess alternative routing options, and make routing decisions based upon those assessments.

For the initial analysis, the government gave railroads the option of completing the initial route analysis by September 1, 2009 based on 6 months of data (from July to December 2008), or March 31, 2020 based on 12 months of data (full year 2008). CSXT was one of the first railroads to complete the initial route analysis, on September 1, 2009 using the Rail Corridor Risk Management ("RCRMS") tool, a Government-funded routing model. RCRMS is a statistical routing model that railroads may use to assist with compliance with the rule. The RCRMS model was developed by expert

consultants with periodic reviews by a government executive oversight panel -- officials from TSA, DOT, FRA, and PHMSA. Railroads are not required to use RCRMS and may choose other routing models for use in preparing their risk analyses.

We recognize the importance of this regulation, but nonetheless, the route analysis requirement was a complicated and burdensome process. It imposed significant demands on CSXT management time and resources. While this is important and necessary work, we must keep in mind at all times that the traffic subject to the routing rule represents about one-half of one percent of CSXT's total traffic base, and that these efforts are consuming -- and will continue to consume -- a disproportionate share of management resources.

In January 2009, the DOT issued interim tank car standards that mandate commodity-specific improvements in the safety features and design standards for tank cars transporting TIH materials. These interim standards were adopted to improve the accident survivability of TIH tank cars. At the same time, the DOT imposed speed restrictions on trains carrying even a single carload of TIH materials.

VOLUNTARY ACTIONS

CSXT appreciates the freight rail security guidance in the form of regulations from DHS, but we are still an Industry (and a railroad) that does act proactively and voluntarily to improve the safety and security of the rail network.

At CSXT, “Safety is a Way of Life” and we maintain a steadfast commitment to the safety and security of our operations and the communities in which we operate. CSXT’s security challenge extends to 21,000 miles of track in 23 states and the District of Columbia. This network crosses 700 counties and 13,000 local jurisdictions.

CSXT believes that partnerships and close coordination of security concerns is essential to enhancing public safety and benefits the communities we serve, our employees, and our operations. We work closely with the Industry and with federal, state and local officials, on improving the safety and security of rail transportation to help keep our employees, our communities, and our customers’ employees safe. As part of this effort, CSXT has established public-private partnerships to provide federal and state homeland security officials valuable, current information they can use to protect the communities they serve. Formalized partnerships allow CSXT, state officials and first responders to effectively and seamlessly share information and work side-by-side protecting the communities we serve and our employees.

At CSXT, we believe that public-private partnerships offer the best route to improving not only freight rail security but also national security. The cornerstone of CSXT’s public-private partnerships is sharing our highly-specialized secure Network Operations Workstation (“SecureNOW”) with federal and state homeland security officials. The SecureNOW system is a proprietary, secure online computer tool used to monitor, identify and respond to rail-security and emergency issues throughout the

CSXT network. This system, developed by CSXT, provides CSXT employees and trained state homeland security and public agency officials with a tool to promptly identify the location and status of CSXT trains and rail cars on our network. SecureNOW allows trained security and public agency officials in several states to independently track the location of CSXT trains and the contents of the rail cars in those trains in a nearly real-time environment. Before, officials needed to telephone CSXT to access this information.

CSXT's SecureNOW system and our approach to information sharing helps homeland security officials prepare for and - if needed - respond to emergency situations. Access to SecureNOW also provides state and federal officials with additional information about what is carried on our rails, and state officials can more efficiently allocate law enforcement resources, coordinate with CSXT security officials, and integrate rail security into on-going law enforcement operations.

In fact, CSXT has entered into partnerships with two federal entities - the TSA Freedom Center (TSOC) and the DOT Crisis Management Center. This allows trained federal homeland security officials to have nearly real time information regarding the location of CSXT trains and the contents of the rail cars transported on our lines. In addition to these federal partnerships, CSXT also has partnerships for access to SecureNOW with New York, New Jersey, Kentucky, Maryland, Indiana, Ohio, Georgia, Florida. These partnerships formalize and enhance CSXT's ongoing commitment to

these states and federal agencies to share information, resources and strategies in order to better protect the communities in which CSXT operates.

As part of CSXT's ongoing commitment to enhancing rail security, CSXT is collaborating with the National Alliance for Public Safety GIS, in the development of a GIS tool for sharing data to enhance decision support for the prevention, mitigation, and response to emergencies. The GIS tool includes CSXT's comprehensive rail yard emergency response schematics, and detailed mapping of the rail lines connecting our yards. This project, when completed, will be directly accessible by emergency responders and will provide the location of known hazards in CSXT rail yards as well as identify access points onto CSXT property.

Additionally, CSXT is dedicated to educating communities and first responders about rail emergency response programs. We provide communities and emergency responders with the information and training necessary to address a rail-related emergency. Each year we conduct a tremendous amount of training and coordination with local first responders and security officials. We regularly provide first responders hazardous material incident-response training by our hazardous materials team. The training consists of classroom training, table top exercises, and hands-on training using the CSXT safety train. These training sessions familiarize first responders with the commodities moved by rail, the containers used, how to locate contact information and carry out appropriate response procedures. This training has been very well received by first responder agencies and we continue to build on this collaborative effort.

One outstanding example of the Industry's effort to enhance training for emergency responders is witnessed by the AAR's Transportation Technology Center located in Pueblo, Colorado, receiving congressional authorization to become a member of The National Domestic Preparedness Consortium ("NDCP"). The NDCP includes eight other nationally recognized organizations that address the counter-terrorism preparedness and training needs of our nation's emergency responders. At TTCI, emergency first responders receive comprehensive and realistic training on surface transportation security and emergency response.

CSXT, like all the Class I railroads, regularly provides first response agencies in every jurisdiction where we operate with a Community Awareness Emergency Planning Guide, which, for training and planning purposes, provides a list of the top 25 hazardous commodities shipped by rail in North America as well as a list of the top 25 shipped by CSXT. Upon request, we provide local first responders with a density study that details the top hazardous commodities for a specific community, and provides responders with the necessary information to plan for a commodity-specific and community-specific response.

CSXT also works cooperatively with local first responders to familiarize them with CSXT facilities and our operations. CSXT has a long standing practice of inviting local responders into rail yards and facilities so they may become familiar with on-site safety considerations. The benefit of this open door policy is two fold. First, responders are better equipped to safely and effectively aid CSXT in the event of a rail-related incident

or other emergency on rail property. Second, this practice allows local law enforcement officers to become familiar with rail property so that CSXT's police force and local law enforcement officials can coordinate on issues like rail crime, sabotage, and trespasser mitigation efforts.

CSXT is proud to offer industry-leading training programs to local first responders and emergency personnel in the communities we serve. But CSXT's training efforts do not stop here. CSXT also provides rail safety training to Short Lines. Our goal is to expand the sophistication of Short Line managers on important rail transportation safety issues. CSXT's safety training includes environmental regulations and compliance, waste management, hazmat awareness and response, security planning and train accident prevention. CSXT provides annual updates and makes CSXT project managers and the CSXT Public Safety Coordination Center hotline (1-800-232-0144) available to Short Lines to help them with issues on an ongoing basis.

Employee communication is central to CSXT's philosophy. We continue to have dialogue with labor union representatives on security training and employee perspectives on rail security issues. CSXT and the Industry are taking the initiative to engage labor on several different fronts. As recently as last week, CSXT and other Industry representatives met with the Teamsters Rail Conference on overall railroad security.

However, our actions cannot be solely focused on freight rail security. Given the information we have received from federal intelligence sources, we believe that the greatest terrorist threat to CSXT comes from the approximately 8 million passenger and commuter train miles each year that operate on CSXT-owned rail lines. To that end, we work closely with the agencies entrusted to carry passengers on our lines to protect the 19 million riders on those trains. In 2007, CSXT developed a series of 149 safe havens for Amtrak trains operating on CSXT-owned rail lines. These safe havens allow for pre-identified and coordinated locations, approximately 25 to 30 miles apart, where during a time of increased terrorist concern or an actual attack, we can safely bring Amtrak trains to a stop in order to evacuate or tend to passengers needs. In 2009, we added safe havens for our commuter partners – VRE, MARC, Tri Rail, and MBTA. Emergency responders at all safe haven location received information and training to assist in their important role should we have to activate our safe haven plan.

CSXT also recognizes the vital role that freight railroad police play in enhancing freight rail and national security. CSXT, like all Class I railroads, has its own police force with commissioned railroad police officers to maintain the safety and security of the public and the freight entrusted to the railroad. However, the CSXT police department is the only U.S. based freight railroad police department to be nationally accredited by the Commission on Accreditation for Law Enforcement Agencies ("CALEA"). CSXT is proud of this accomplishment, as only approximately 10% of the police departments in the country have met the more than 450 required best practice standards to be awarded CALEA accreditation.

Additionally, in 2004, CSXT's police department developed and implemented a Rapid Response Team ("RRT") that consists of a group of highly-skilled CSXT Police special agents specifically trained to respond to security incidents. The RRT is an interdisciplinary team that is composed of CSXT Police special agents. Among them are explosive-detection K-9 teams, counter-surveillance specialists, and tactical response specialists, Hazmat managers with paramedic and engineer qualifications, and a medical support element.

The CSXT RRT is responsible for rail counter-terrorism to ensure that rail infrastructure does not become a target of domestic or foreign terrorists. RRT team members are positioned and equipped for a rapid response anywhere on the CSXT system. They are highly trained according to national and international guidelines, which makes the team the premier rail counter-terrorist experts in the industry. In fact, the RRT provides rail-specific anti-terrorism training to public agencies to support their mission and aid in response to railroad incidents and/or threats.

In fact, since its inception in 2004, our CSX RRT has trained over 90 local, county, state, federal and military law enforcement agencies and nearly 900 tactical police officers on how to respond to a terrorist attack to a railroad – both passenger and freight using a one-of-a-kind tactical training train (T3) that allows for realistic force-on-force training.

RECOMMENDATIONS: COORDINATION, COLLABORATION, & COMMUNICATION

1. Coordination among regulators
2. Communication between railroads and regulators (i.e., intelligence sharing)
3. Collaboration (maximizing government use of railroad expertise)

CSXT and the Industry recognize the complexity of challenges faced by both the government and American business in ensuring the safe and secure movement of people and products in a post-9/11 World. We also recognize that government responsibility, first and foremost, is to protect the public. Yet, it is also important that DHS react to the new security environment with sound regulatory policies that do not impede the free flow of commerce. Open dialogue and collaboration with Industry stakeholders, including extensive and constructive discussions at the earliest stages, will ensure positive results with minimal impacts on our industrial economy.

Grant programs are an important component of government-industry collaboration. Federal money to support private security efforts is an effective means by which government can leverage resources. In this regard, it is important to remember that the rail security grant program, as originally conceived, was intended to enhance freight rail security. As implemented, however, most of the available funding has gone to projects other than freight security infrastructure. The Class I railroads would urge the Committee to direct future grant programs precisely to freight rail infrastructure security projects.

CSXT does not disagree with the importance of mandatory security regulations, but regulatory controls should be adopted only after meaningful coordination and collaboration. Most industries are more complicated than first meets the eye, and the rail industry is particularly so. By working with the Industry and fully understanding the implications of possible approaches to federal policy, DHS would best be able to ensure that it minimizes the unintended consequences of new regulations and policies. Genuine, open communication between stakeholders and the government can not only lead to practical solutions; it can open the door to solutions that might not otherwise have been apparent.

We urge DHS to make early, frequent consultation with all affected industries a hallmark of its security policymaking. Establishing a formal collaborative rulemaking process will give stakeholders the opportunity to be directly involved in improving rail transportation security and to develop mutually satisfactory rail security regulations and practices. It will ensure that final rules are well-conceived, consistent, and effective for Industry. This kind of coordination and consultation before decisions have been finalized, before agency direction has been determined, and before a notice of proposed rulemaking is published, can only improve the final product. True collaboration will ensure that we are taking maximum advantage of the best thinking in government and industry.

Specifically, CSXT recommends that DHS adopt a process that gives all stakeholders the opportunity to have an open dialogue with TSA on rail security issues similar to the FRA's Rail Safety Advisory Committees ("RSAC"). As the Committee may know, the RSAC is a formal advisory committee that provides advice and recommendations to the FRA on development of new safety regulations, revision of existing regulations, and non-regulatory options for improving railroad safety. The RSAC members consist of railroads, labor organizations, state associations, government agencies, and other key rail safety stakeholders. The RSAC gives stakeholders an opportunity to have an open dialogue on rail safety best practices, a forum to advise FRA on rail safety issues, and a process to identify reasonable solutions and regulatory options for enhancing rail safety. This process has proven effective in reaching consensus and limiting areas of disagreement. Importantly, the agency retains full responsibility and authority over the actual final rule adopted. The stakeholders contribute; the agency decides.

Establishing an RSAC-like process would not impede DHS from issuing proposed rulemakings in a timely manner. Rather, CSXT believes that a formal process like this would (1) expedite adoption of future final rules, (2) facilitate more effective compliance, and (3) provide Industry stakeholders with a better understanding of the agency's expectations and its views on the scope of new rules.

CONCLUSION

CSXT recognizes that the freight rail and national security environment in which it operates is continually changing. As such, safety and security are, and will remain, our top priority. CSXT and the Industry look forward to working with DHS to develop sound security policy and practices that are coordinated, flexible, and that ensure the continued efficient and effective flow of goods. CSXT appreciates the opportunity to provide comments on this important topic.