petitioned for membership on the Committee, but was not selected. MBTA is a commuter line in the northeast with operational characteristics that are very similar to those of Amtrak, a Committee member. Also, APTA's Committee member will represent all commuter lines in this proceeding. Therefore, FRA believes that MBTA's interests will be adequately represented by the other commuter rail organizations on the Committee.

The Long Island Rail Road (LIRR) requested Committee membership and nominated its Executive Director of System Safety to serve as its representative. Although FRA was not able to select LIRR for Committee membership, its nominee will serve on the Committee representing the interests of APTA and all public transit organizations. Therefore, LIRR's interests will be effectively considered during the negotiation process.

The Wisconsin Central Ltd. (WC) requested representation on the Committee and nominated its Vice President of Engineering to represent its interests. This individual was also nominated to represent RRA. FRA was unable to select WC individually, but its nominee has been chosen to represent RRA and all regional railroads. Therefore, WC's interests will be adequately addressed in the negotiation process.

Finally, the National Railroad Construction and Maintenance Association, Inc. (NRCMA) filed a request for membership jointly with RRA, and nominated its Executive Vice President to represent the interests of NRCMA and RRA. As indicated above, RRA filed a second application for representation asking that WC's Vice President of Engineering also represent their interests. As already stated, this individual has been chosen to represent RRA (and WC implicitly) because he brings extensive hands-on experience to the proceeding. FRA deliberated over NRCMA's application, and determined that its interests will be effectively represented by the railroads and labor organizations on the Committee who currently have primary responsibilities for protecting roadway workers. NRCMA's duties derive from and are subject to those of the railroads with whom they contract for maintenance and construction work. Given the limitations the agency faces in creating a Committee of reasonable size, and the broad spectrum of railroads and employee crafts represented on the Committee, FRA believes that NRCMA's interests will be effectively addressed in this process. Also, public participation will be a key component of this process;

all Committee meetings will be open to the public, and the Committee is expected to devise procedures that will periodically permit comment from the public. FRA will hold a public hearing after issuing a proposed rule, and will invite and consider comments from organizations such as the NRCMA before promulgating any final standard.

IV. Participation by Non-Members

FRA believes that public participation is critical to the success of this proceeding. Participation is not limited to Committee members. Negotiation sessions will be open to the public, so interested parties may observe the negotiations and communicate their views in the appropriate time and manner to Committee members. Also, interested groups or individuals may have the opportunity to participate with working groups of the Committee. FRA believes that this sort of participation will produce meaningful information and lead to a more effective roadway worker safety program. Of course, FRA will invite comment on the proposed rule resulting from the Committee's deliberations and hold a public hearing to hear additional comments.

V. Major Issues

In its notice of intent, FRA tentatively identified major issues to consider in the negotiation and asked for comment on whether the issues presented were appropriate and if alternate or additional issues should be considered. Unfortunately, most comments submitted were devoted to issues of membership rather than rule substance. Listed below are subjects FRA believes the negotiation process should address:

- 1. Devices available that would reduce the risk of injury to roadway workers;
- 2. Practices and training programs currently in use or that may be instituted to reduce the risk of injury to roadway workers;
- 3. The extent to which environmental, topographical, and operational conditions do or should cause variations in any roadway worker safety program;
- 4. The type and extent of FRA enforcement and recordkeeping requirements necessary to protect roadway workers; and
- 5. The costs associated with developing an effective roadway worker safety program. (The costs include but are not limited to the burden on railroads and local, state, and federal government entities.)

FRA believes that the negotiation process should be open to discussion about these and any other relevant matters the Committee finds necessary to explore.

VI. Procedure and Schedule

Those who commented on the notice of intent generally did not address Committee procedures. FRA anticipates that all or a substantial majority of the negotiation sessions will take place in Washington, D.C. at DOT headquarters. Given FRA's limited resources, travel outside of Washington, D.C. for the purpose of holding negotiation sessions is unlikely. However, FRA will consider any recommendations made by the Committee in this regard.

FRA will not make any determinations at this time concerning the frequency or timing of public hearings, or the development of negotiation subcommittees. FRA's ability to hold public hearings will be subject to the availability of funds for this purpose. However, FRA will consider any recommendations the Committee makes on these matters.

Consistent with requirements of the Federal Advisory Committee Act, a clear and comprehensive record of the Committee's deliberations should be kept and circulated to Committee members. FRA will provide an administrative specialist to the Committee to complete these duties and assist with drafting any additional documents, including the Committee's report. The Committee may also choose to designate additional individuals to draft documents.

The objective of the negotiation, in FRA's view, is for the Committee to produce a report recommending a course of action for FRA to follow that will prevent roadway worker injuries and fatalities. FRA anticipates that the report will include a draft NPRM on which the Committee has reached consensus. This approach is consistent with recommendations of the Administrative Conference of the United States on regulatory negotiation. As stated in the notice of intent, FRA will proceed on its own if the Committee cannot reach consensus on a recommended course of action. In that event, FRA will make every attempt to include provisions that the Committee did reach agreement on in the agency's NPRM. Also, as stated in the notice of intent, FRA must review the Committee's recommendations for enforceability and effectiveness. If the agency determines that the report contains recommendations which are unenforceable, contrary to existing law, or completely ineffective, FRA may abandon or amend the Committee's recommendations. However, we believe