regarded a system-wide utility unit to be the "optimal unit." See, e.g., *New* England Telephone and Telegraph, 280 NLRB 162 (1986). Likewise, crews on ocean-going vessels would be excluded, as the presumptively appropriate unit there historically has been found to be "fleet-wide" (which is different from employer-wide). See, e.g., Moore-McCormack Lines, Inc., 139 NLRB 796 (1962). The Board proposes that employers primarily engaged in the construction industry will be excluded from coverage under the rule because identifying the "location" in a construction case would frequently be difficult and require litigation. Construction industry employers typically have several ongoing construction projects at different locations, each of which could be considered a separate site or location. Also, the separate projects are usually of short duration. Thus, the single facility presumption is not readily applicable to that industry.

As we noted above, although we believe a rule with broad scope is desirable, the Board is open to comments on whether other industries should be excluded. Although several comments to the ANPR argued that a single rule would fail to take account of the uniqueness and diversity of particular industries or employers, we believe that none of these commentators demonstrated this uniqueness or diversity in any persuasive manner. Indeed, none suggested a specific rule for their industry. We hope commentators who argue for an exception will justify why an industry which currently is subject to a uniform standard under adjudication nevertheless should not be subject to a uniform standard under a rule.

Several trucking industry commentators pointed out that unlike retail and manufacturing, requested single location units in this industry must be evaluated differently because drivers are mobile while employees in other industries remain relatively fixed in one location. (SAIA, C–9; Con-Way Southern Express, C–26; Viking Freight, et al., C–30.) We are cognizant of this concern and invite more specific commentary about the ambulatory nature of this industry, and whether and in what manner the final rule should take account of that difference.

c. Summary. Having a single rule and broadening the coverage of the rule to most industries is consistent with the Board's handling of single location cases by adjudication. Under adjudication, the Board generally has applied the same factors to all industries. By a single rule, the Board will avoid the possibility of confusion caused by different industry rules, and by the inconsistent results that might follow. Having a single rule also will be consistent with the goals of creating clear and uniform standards, reducing litigation, and processing these cases more efficiently.

3. Applicability to Board Cases

The ANPR stated that the proposed rulemaking would be applicable to "initial organizing petitions." We have, however, modified the applicability of the rule in two respects. First, the proposed rule substitutes 'unrepresented'' for initial organizing to avoid possible confusion over the language "initial organizing." We believe this better expresses our original intention in the ANPR of applying the rule to locations where the employees currently are not represented for collective bargaining. Thus, if a union previously but unsuccessfully attempted to "organize" the location separately or as part of a larger bargaining unit, the rule would still apply to any subsequent petition the union might file for a single location unit, provided the employees are not represented. The same would be true where other locations of the employer are already represented, including those separately represented on a multi-location basis.

Second, although the rule in the ANPR applied to representation petitions seeking an election (RC and RM petitions), we propose that it be applicable to any other type of Board case in which the issue of a single location unit involving unrepresented employees arises. We believe this approach is necessary to avoid potentially inconsistent treatment between single location cases arising under all election petitions (except decertification petitions), and those arising in unfair labor practice cases. See, e.g. Gissel bargaining unit cases, NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). The rule also would apply in cases presenting an accretion issue, since a group of separately located employees cannot be accreted if they can be considered a separate appropriate unit. See, Compact Video Services, 284 NLRB 117, 119 (1987); Gitano Distribution Center, 308 NLRB 1172 (1992). The applicable Board law in these cases would be the rule, unless extraordinary circumstances could be established.

The proposed rule, however, is subject to a number of limitations: 1. As the rule is limited to requested single facility units, it could not be invoked to defeat a request for a broader unit; in such situations the single facility unit presumption is inapplicable. See, *NLRB*

v. Carson Cable, 795 F.2d 879 (9th Cir. 1986); Capitol Coors Co., 309 NLRB 322 (1992). Thus, the rule will have no bearing on petitions for broader units. 2. The rule will not apply to petitions filed under General Box Co., 82 NLRB 678 (1949). in which a voluntarily recognized union seeks an election for the benefit of certification. Such an election would involve employees currently represented, albeit through voluntary recognition. 3. As proposed, the rule does not address the question of the appropriate unit within a facility: that is, the proposed rule does not preclude units that are less than wall-towall at the facility requested. Our current case law does not require a wallto-wall unit if the unit is otherwise appropriate.⁵ 4. Although there were comments urging the Board to apply the rule more broadly to decertification petitions (NRW, C-16), the Board has long held that the appropriate unit for decertification elections must be coextensive with either the unit previously certified or the one recognized as the collective bargaining unit. Delta Mills, 287 NLRB 367, 368 (1987); Campbell Soup Co., 111 NLRB 234 (1955). The Board applied this principle in the Health Care Rulemaking as well. See Collective-Bargaining in the Health Care Industry, Second Notice of Proposed Rulemaking, 53 FR 33900, 33930 (1988), reprinted at 284 NLRB 1528, 1570 (1988); North Country Regional Hospital, 310 NLRB 559 (1993). We see no reason to depart from well-established Board precedent, and thus, the proposed rule will not apply to decertification petitions.6

4. Summary and Conclusions

The scope of the rule as originally proposed would be revised, therefore, to make it applicable to all industries under the Board's jurisdiction, except the construction industry, public utilities, and the maritime industry with respect to ocean-going crews. The rule would apply to all Board cases in which an issue is whether a single location unit of unrepresented employees constitutes a separate appropriate unit. This would include election petitions, unit clarification petitions, and unfair labor practice cases. The rule could not be used to defeat broader units sought by a petitioner or other employee

⁵ Moreover, as with the Health Care Rule, this rule does not prevent the parties from stipulating to a different unit.

⁶This also follows from the fact that decertification elections are by their nature conducted in units already represented, whereas the rule applies only to requested units of unrepresented employees.