exists, this does not mean that the requested unit is "excepted" from being an appropriate unit. Rather, establishing extraordinary circumstances means that the case will be decided by adjudication and the requested unit may or may not be found appropriate.

We have codified one specific extraordinary circumstance in the rule: where 10 per cent or more of the unit employees have temporarily transferred to other facilities of the employer 10 per cent or more of the time during the prior year. We also have requested comments on whether this proposed level of interchange is appropriate.

The rule, however, also allows for other extraordinary circumstances. We have suggested some possibilities in this supplementary information. In Section III.B.1.b.6, we mentioned the possibility that a successful history of bargaining on a broader basis might be an extraordinary circumstance. Section III.B.1.c.5, footnote 9, suggests treating the existence of a small satellite facility as an extraordinary circumstance. These, however, are merely suggestive of the type of situations that might raise an extraordinary circumstance. Invited comments may lead to our reassessing them.

Although we have described possible extraordinary circumstances, there undoubtedly are others; obviously we cannot foresee all circumstances involving the appropriateness of a requested single facility unit. It is for this reason that we have included an extraordinary circumstances exception. To the extent that there is concern that by rulemaking we will preclude addressing unusual cases outside the routine cases, we believe this provision adequately addresses those concerns. We are not mandating any particular result by characterizing a circumstance as extraordinary, but are only requiring that it be decided by adjudication. In inviting comments, however, we emphasize that it is our intention to construe this provision narrowly.

#### V. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the NLRB in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so they can participate effectively in the rulemaking process; and (2) to serve as the record in case of judicial review. The docket, including a verbatim transcript of any hearings that may be held, the exhibits, the written statements, and all comments submitted to the Board, is available for public inspection during normal working hours at the Office of the Executive Secretary in Washington, DC.

### VI. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), the Board certifies that the proposed rule will not have a significant economic impact on small entities. Prior to this rule, parties before the Board were required to litigate the appropriateness of a single location unit if they could not reach agreement on the issue. On implementation of this rule, parties will no longer be required in every case involving this issue to engage in litigation to determine the appropriateness of units, thereby saving all the parties the expense of litigation before the Board and the courts in cases governed by the rule. To the extent that organization of employees for the purpose of collective bargaining will be fostered by this rule, thereby requiring small entities to bargain with unions, and that employees may thereby exercise rights under the National Labor Relations Act, as amended (29 U.S.C. 151, et seq.), the Board notes that such was and is Congress' purpose in enacting the Act.

VII. Statement of Member Cohen

On June 1, 1994, the Board issued an Advance Notice of Proposed Rulemaking (ANPR) with respect to a rule concerning single-facility units. Although I had reservations about the wisdom and necessity for such a rule, I joined my colleagues in issuing the ANPR. I did so because public comment would serve to clarify the issues and to enlighten the Board's decision-making processes concerning these matters.

The comments have now been received, and I have studied them carefully. Having done so, I am still not firmly persuaded that there is a need for a rule. Further, assuming arguendo that there is such a need, I have some reservations about the content of the rule proposed by my colleagues. However, I have decided to withhold final judgment on these matters, pending public response to the specific rule that is now being proposed. Accordingly, without necessarily endorsing all that my colleagues have said about the proposal, I join them in soliciting further public response to it.

As I see it, the proposed rule departs from the multi-factorial approach described in *J & L Plate*, 310 NLRB 429 (1993). Concededly, that departure has the potential advantage of bringing greater clarity and expedition to the processing and disposition of these cases. In addition, it may reduce occasionally burdensome and expensive litigation. On the other hand, the current system has its own values. The relevant factors are well known, and they can be applied to accommodate the peculiarities of individual cases. The Board decisions, with rare exceptions, have been upheld by the courts. In addition, the stipulation rate remains high. Finally, even the litigated cases are usually resolved within a reasonably short period of time.

To be sure, there is always room for improvement, and some cases linger far too long. As I see it, the issue before the Board is one of balance: whether the potential benefits of obtaining greater expedition and clarity under the proposed rule outweigh the potential risks of jeopardizing the precision, stability, and general judicial acceptance of the current approach. I welcome the public's experience and expertise concerning the resolution of this delicate balance.

## List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor management relations.

#### **Regulatory Text**

For the reasons set forth at 59 FR 28501 (June 2, 1994) as supplemented and modified by this Supplementary Information, 29 CFR Part 103 is proposed to be amended as follows:

#### PART 103—OTHER RULES

1. The authority citation for 29 CFR Part 103 is revised to read as follows:

Authority: 5 U.S.C. 553; 29 U.S.C.156.

2. Section 103.40 is added to subpart C to read as follows:

# §103.40 Appropriateness of single location units.

(a) The rule in this section applies to all employers over which the Board asserts jurisdiction except: public utilities; employers engaged primarily in the construction industry; and employers in the maritime industry in regard to their ocean-going vessels.

(b) An unrepresented single location unit shall, except in extraordinary circumstances, be found appropriate for the purposes of collective bargaining; Provided:

(1) That 15 or more employees in the requested unit are employed at that location; and

(2) That no other location of the employer is located within one mile of the requested location; and

(3) That a supervisor within the meaning of Section 2(11) of the National Labor Relations Act is present at the