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In the Matter of .....  
.....  
ROE'S ORCHARDS .....  
Route 94 .....  
Chester, NY 10918 .....  
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Case No. 82-WPA-4

DECISION AND ORDER

This is a variance proceeding under the Wagner-Peyser Act, 29 U.S.C. §49 et seq., and pertinent regulations thereunder (20 CFR §654, Subpart E and §658, Subpart E).

Statement of the Case

The Employer above named seeks review of a determination of the Acting Regional Administrator denying the Employer's request for a variance from specific housing standards for agricultural workers set forth in 20 CFR §§654.404-417.

A hearing having been duly requested, an order to show cause was issued by the undersigned under date of September 23, 1982 pursuant to the provisions of 20 CFR §658.424, affording the parties 20 days to submit legal arguments and supporting documentation, with a view to determining the necessity for a hearing. In response, the Regional Solicitor submitted a form letter dated October 13, 1982, requesting that a hearing be dispensed with and that a determination be made on the record. Although more than 20 working days have elapsed since the issuance of the order to show cause, no response has been received from or on behalf of the Employer. Consequently, at the Regional Solicitor's request, a hearing is dispensed with and the determination is made on the record.

Findings of Fact and  
Conclusions of Law

The Employer requested a variance from the space requirements of 20 CFR §654.407(c).

The record shows that upon inspection, a minimal shortage of housing space (six percent or less of the required footage) was cited, but such shortage was not found to adversely affect

the health, safety or welfare of any workers using the facility. The record further shows that the Rural Employment Representative expressly recommended that the requested variance be granted.

The Acting Regional Administrator denied the Employer's request for variance, but failed to state in his written notice thereof any reasons for the denial, as required by 20 CFR §654.402(d).

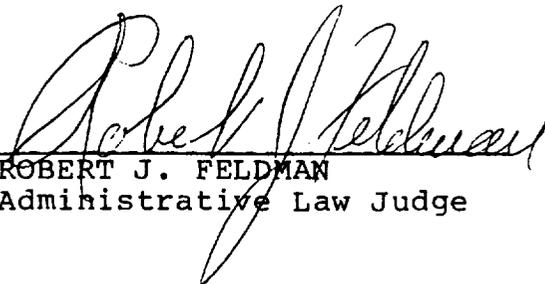
The purpose of the provisions for variance is to relieve employers of strict compliance with prescribed standards where resulting conditions do not endanger agricultural workers. In the absence of any finding that the requested variance would adversely affect workers' health, safety or welfare, a minimal shortage of space does not of itself warrant denial. The record herein contains no basis for refusing to grant the recommended approval. The Regional Solicitor's form letter of October 13, 1982 refers to no pertinent facts and contains no documentation that might be deemed to support the generalized legal conclusions alleged.

In short, I conclude that the denial of variance herein was arbitrary, capricious and contrary to law, and in any event, the notice thereof was fatally defective.

ORDER

In view of the foregoing, it is

ORDERED that the Regional Administrator's denial of the Employer's request for variance be, and the same hereby is, vacated and set aside, and said request is in all respects approved.

  
ROBERT J. FELDMAN  
Administrative Law Judge

Dated: November 1, 1982  
Washington, D.C.

RJF/mml

CERTIFICATE OF SERVICE

Case Name: Roe Orchards

Case No.: 82-WPA-4

A copy of the foregoing DECISION AND ORDER  
was mailed to each of the following persons at the addresses  
listed below on the following date:

Date: \_\_\_\_\_

Name: \_\_\_\_\_

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