proceedings is covered in proposed rule § 2200.200(b)(4)'s prohibition of interlocutory appeals for E-Z Trial proceedings.

#### Filing of Pleadings

E-Z Trial is intended to provide parties with a less formal adjudicative process. Once a case is designated for E-Z Trial, under the proposed rule, § 2200.205(a), the Secretary would not have to file a complaint as required under current rule § 2200.34(a), a response to a petition for modification of the abatement period under current rule § 2200.37(d)(5), or a response to an employee contest to the abatement period under current rule § 2200.38(a). In addition, under proposed rule § 2200.205(b), a motion would not be viewed favorably if the subject of the motion has not been first discussed among the parties. The Commission is not presently amending the time limits for filing pleadings. Instead, the Commission intends to process cases as promptly as practicable in order to avoid the filing of pleadings.

## **Pre-hearing Conference**

Under the proposed rule, § 2200.206(a) requires that as early as practicable, the presiding judge would conduct a pre-hearing conference. The judge has the discretion to determine the format of the pre-hearing conference. The pre-hearing conference would be "live," and can be conducted in person or by such electronic means as telephone or video conferences. It cannot be conducted by such devices as fax machines. In addition, the current rule does not require that affirmative defenses such as "unpreventable employee misconduct," "infeasibility," and "greater hazard," be raised prior to the hearing. Proposed rule § 2200.206(b) requires that affirmative defenses would be raised at the pre-hearing conference, and that affirmative defenses cannot otherwise be raised in later proceedings except under extraordinary circumstances. The judge would issue an order setting forth any agreements reached by the parties during the prehearing conference.

# Discovery

No substantive change is proposed to the current rule on discovery, § 2200.210. Parties may request discovery, but no discovery would be conducted except on order of the judge.

#### Hearing

It is expected that the E-Z Trial hearing would be conducted in the format decided by the hearing judge. Witnesses, however, would be sworn and the proceedings would be reported. The requirement for a reporter and transcript, currently found in § 2200.208, would become part of the new rule § 2200.208(d). Typically, oral argument would be presented at the close of the hearing. However, the judge has the discretion to permit the parties to file written briefs instead. If appropriate, the judge has the option of announcing his decision from the bench on the record. If not announced from the bench, a written decision would be issued within 45 days, unless an extension was granted by the Chief Judge.

### **Review of Judge's Decision**

Unlike the current rule, this proposed rule does not require the judge to prepare a written decision, but would instead permit him to issue a decision from the bench. In that event, that portion of the transcript containing the judge's bench decision will be considered the written decision and will be included in the judge's order.

#### Applicability of the Commission's **Conventional Rules**

Included in the list of rules that do not apply to E-Z Trials is § 2200.74, which covers the filing of briefs and proposed findings of fact with the judge, as well as oral arguments at the hearing. No other substantive change is proposed to the current rule, § 2200.212.

## List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission proposes to amend title 29, chapter XX, part 2200, subpart M of the Code of Federal Regulations as follows:

### PART 2200—RULES OF PROCEDURE

1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Subpart M is revised to read as follows:

#### Subpart M-E-Z Trials

Sec.	
2200.200	Purpose.
2200.201	Application.
2200.202	Eligibility for E–Z Trial.
2200.203	Commencing E–Z Trial.
2200.204	Discontinuance of E–Z Trial.
2200.205	Filing of pleadings.
2200.206	Pre-hearing conference.
2200.207	Discovery.
2200.208	Hearing.
2200.209	Review of Judge's decision.
2200.210	Applicability of Subparts A
through G.	

## Subpart M—E-Z Trials

#### § 2200.200 Purpose.

(a) The purpose of the E–Z Trials subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may reduce the time and expense of litigation while being assured due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are as follows:

(1) Complaints and answers are not required.

(2) Pleadings generally are not required. Early discussions among the parties and the Administrative Law Judge are required to narrow and define the disputes between the parties.

(3) Discovery is generally not permitted.

(4) Interlocutory appeals are not permitted.

(5) Hearings are less formal. The Federal Rules of Evidence do not apply. Instead of briefs, the parties will argue their case orally before the Judge at the conclusion of the hearing. In many instances, the Judge will render his decision from the bench.

## § 2200.201 Application.

The rules in this subpart will govern proceedings before a Judge in a case chosen for E-Z Trial under § 2200.203.

## § 2200.202 Eligiblity for E-Z Trial.

All cases with a low aggregate penalty are eligible for E-Z Trial. Those cases selected for E-Z Trial will be those that also do not involve complex issues of law or fact.

## § 2200.203 Commencing E-Z Trial.

(a) Selection. Upon receipt of a Notice of Contest, the Chief Administrative Law Judge may, at his or her discretion, assign an appropriate case for E-Z Trial.

(b) Party request. Within twenty days of the notice of docketing, any party may request the Chief Judge or the Judge assigned to the case to assign the case for E–Z Trial. The request must be in writing. For example, "I request an E-Z Trial" will suffice. The request must be sent to the Executive Secretary. Copies must be sent to each of the other parties.

(c) Judge's ruling on request. The Chief Judge or the Judge assigned to the