specifically grant authority to the presiding Judge to allow whatever discovery he finds appropriate.

Thus, where the Judge determines that extensive discovery is necessary, or finds some other reason for discontinuing E–Z Trial, § 2200.204(a) authorizes him to do so after consultation with the Chief Judge. The Commission does not foresee this consultation process as significantly restricting the presiding Judge from appropriately removing a case from E– Z Trial.

It is the Commission's view that making it too easy for the parties to opt out of E-Z Trial would run counter to the purpose of the program. Nonetheless, where a party believes that its case has been inappropriately assigned to E–Z Trial, § 2200.204(b) allows that party to move for the Judge to return the matter to conventional proceedings. The Commission expects that, upon a showing of good cause, most requests for returning a case to conventional proceedings will be granted. Joint motions to return a case to conventional proceedings shall be granted by the Judge and do not require a showing of good cause.

While the Commission recognizes the concern expressed by many commentators over the assignment of cases to E-Z Trial without the consent of the parties, it believes that such a mechanism is necessary. As the Commission stated in the preamble to the proposed E-Z Trial rules, the previous rules for Simplified Proceedings, which would take effect only upon a party's request, were rarely used. When Simplified Proceedings were requested by a party, the other party often filed and objection that was granted by the presiding judge. It is the Commission's goal that these E-Z Trial rules will increase the number of cases that use simplified proceedings to a significant level. The Commission hopes that after some experience with this process, litigants and their representatives will find it to be a useful alternative to our conventional trial process. Therefore, the Commission has set forth a sunset provision at § 2200.201(b). Under this provision, §2200.203(a), which allows the Chief Judge to assign cases for E-Z Trial, will no longer be in effect after the conclusion of the plot program unless otherwise extended by the Commission.

Disclosure and Discovery

Most of the Commentators expressed reservations concerning the restrictions on discovery set for at § 2200.207. These commentators feared that the loss of discovery would severely curtail their ability to develop their case. A recurrent theme was that, without discovery, employers would be open to "trial by ambush" and that the Secretary, by virtue of his inspection of the worksite, already had, in effect extensive discovery. Similarly, the Secretary of Labor was concerned that restrictions on discovery would prevent him from rebutting affirmative defenses raised by employers. Accordingly, the Secretary suggested that the rule be relaxed to allow discovery upon a showing of need.

We believe that these commentators have interpreted the intent of the rule. We are aware that E–Z Trial proceedings must be structured fairly. The proposed rule was designed to have the Judge take a more active role in the discovery process to ensure that it is limited to that which is necessary. By doing so, the Commission hoped to minimize delay and attendant costs. It appears that the role of discovery was too narrowly described in § 2200.200(b)(3) as being generally not permitted. We have modified this rule to more accurately reflect the intent of the Commission.

Because it is the intent of the Commission that E–Z Trial will enable the small employer to represent himself better, it is especially important that the Judge be involved in the discovery process. Few things could be more intimidating or confusing to a *pro se* employer than to receive a long list of interrogatories, requests for admission, or requests for production of documents or to have to partake in depositions. When such requests are made, the Commission expects that its Judges will restrict discovery that appears to be of marginal value.

It is the Commission's expectation that, as a result of reasonable restrictions on discover, the adjudicatory process will be substantially accelerated with significant cost savings being realized by both employers and the Secretary. The Commission expects that having the Judge take a more active role will expedite the case.

Several commentators observed that if discovery were to be restricted, the Secretary should be required to turn over his investigatory file to the employer early enough in the proceeding to enable the employer to evaluate the case against him and prepare a defense. We find this suggestion to be well-taken and have included a new § 2200.206 to require that the Secretary disclose to the employer certain information early in the proceeding. We note that it is already a general practice amongst some of the Commission's Judges to require the Secretary to turn over all or part of the investigatory file. In many other cases, the file is routinely turned over to the employer's counsel upon request. However, most *pro se* employers would not know that they have the right to request information contained in the investigative file. Therefore, by requiring that certain information in the file be turned over early in the proceeding, the employer would, in all cases, be given the basic documents necessary for the preparation of its defense.

The Secretary expressed the concern that requiring him to turn over the entire investigatory file in all cases would impose a substantial burden. Not only would the Secretary be required in every case to duplicate numerous documents, but he would also have to individually review each document to edit out any protected information. While we find these concerns to be well-founded, we note that mandatory pre-discovery disclosure is the trend in many jurisdictions, including the Federal Courts. For example, Federal Rule of Civil Procedure $2\overline{6}(a)$ requires the disclosure of certain basic information needed by parties to prepare for trial or make an informed decision about settlement.

For E–Z Trial, §2200.206 sets forth the minimum disclosure requirements necessary for the parties to evaluate their case. The Commission has attempted to balance the employer's need for certain information necessary to its case against the burden it would impose on the Secretary to require the entire investigatory file to be turned over in every case. Therefore, the Commission has determined that it will require that two essential OSHA forms be turned over to the employer early in the proceeding: the compliance officer's narrative (Form OSHA-1A) and the worksheet (Form OSHA 1-B) or their equivalents. As part of his or her control over the discovery process, the presiding Judge would retain the authority to order that other materials be made available to the employer.

Simarily, the Commission believes that where an employer raises affirmative defenses, the Judge should require it to submit certain authenticating documents to the Secretary. For example, if an employer argues that a violation was the result of unpreventable employee misconduct, the Judge should, at a minimum, require it to submit to the Secretary a copy of the relevant portions of its safety manual and documentation establishing the scope and nature of employee discipline. The Commission has