always has sought to encourage the amicable settlement of its cases. In no way do we desire to undermine this goal. It is the Commission's hope that by directing the Judge to take an active role in narrowing and defining the issues at the pre-hearing conference, parties will be more likely, not less likely, to determine that settling their cases rather than going to a hearing is in their best interest. The Commission would also stress to pro se employers, and would expect its Judges to transmit this point during the pre-hearing conference, that E–Z Trial only cuts out some procedural red tape and does not imply that it will be easier for employers to prevail in their contests. Nonetheless, we are acutely aware that a reduction in settlements may be an unintended consequence of E-Z Trial. This is a major reason for the pilot nature of this project. We will be watching this issue closely for the duration of the pilot project.

## 2. Convert into Mini-Trial Pilot

The Secretary suggested that the Commission convert E–Z Trial into a mini-trial pilot where a party could request a *de novo* proceeding under conventional rules before the Judge. The Secretary opines that this would give the small employer an opportunity to state its case to the Judge while protecting the interests of the litigants when they believe that their case could only be adequately presented under conventional proceedings.

The Commission finds no merit in this proposal. It is the Commission's opinion that in most cases the Secretary's proposal would amount to little more than giving the parties a "second bite of the apple," and would further strain the Commission's limited resources. In some cases, the parties can invoke the Commission's settlement Judge rule, § 2200.101, to accomplish the same result. The purpose of E–Z Trial is to streamline and shorten the adjudicatory process; not to lengthen the process by giving every losing party an opportunity to retry their case.

The Secretary also suggested that, given the streamlining of the adjudicatory process, Judges' decisions rendered after E–Z Trial should have no precedential value. However, unreviewed opinions of Judges do not presently constitute precedent binding on the Review Commission. An unreviewed Judge's decision issued after an E–Z Trial would likewise not be binding on the Commission. Conversely, a Commission decision would have precedential value whether it resulted from E–Z Trial proceedings or regular proceedings. Additionally, if on review

the Commission is of the view that due process had not been adequately provided, the case could be remanded to the Judge.

# 3. Grandfather Clause

One commentator suggested exempting those who currently practice before the Commission from having their cases assigned to E–Z Trial. We find no purpose to be served by granting an exemption to anyone who has previously represented parties before the Commission. E–Z Trial is designed to benefit parties, not their representatives. It would countermand the purpose of E–Z Trial to force a party to have a conventional proceeding for no reason other than its choice of legal representative.

# 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 amends Title 29, Chapter XX, Part 2200 of the Code of Federal Regulations as follows:

# PART 2200—RULES OF PROCEDURE

1. The authority citation 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 Trial

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	Disclosure of Information.
2200.207	Pre-hearing conference.
2200.208	Discovery.
2200.209	Hearing.
2200.210	Review of Judge's decision.
2200.211	Applicability of Subparts A
through G.	

#### Subpart M—E-Z Trial

# § 2200.200 Purpose.

(a) The purpose of the E–Z Trial 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) The Secretary is required to provide the employer with certain informational documents early in the proceeding.
- (4) Discovery is not permitted except as ordered by the Administrative Law Judge.
- (5) Interlocutory appeals are not permitted.
- (6) 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 or her decision from the bench.

# § 2200.201 Application.

- (a) The rules in this subpart will govern proceedings before a Judge in a case chosen for E–Z Trial under § 2200.203.
- (b) Sunset Provision. Section 2200.203(a), which permits the Chief Administrative Law Judge to assign a case for E–Z Trial, will no longer be effective after September 30, 1996 unless the rule is extended by the Commission by publication of a final rule in the Federal Register. After September 30, 1996, a case will only be assigned to E–Z Trial if the assignment is requested by a party.

# § 2200.202 Eligibility for E-Z Trial.

Those cases selected for E–Z Trial will be those that do not involve complex issues of law or fact. Cases appropriate for E–Z Trial would generally include those with one or more of the following characteristics:

- (a) relatively few citation items,
- (b) an aggregate proposed penalty of not more than \$10,000,
  - (c) no allegation of willfulness,
- (d) a hearing that is expected to take less than two days, or
- (e) a small employer whether appearing *pro se* or represented by counsel.

# § 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.