

case no longer is appropriate for the simplified rules. In this way, the Commission can provide efficient, user-friendly adjudication, while assuring insofar as possible in all cases that due process is met and a hearing is conducted that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554, 556 ("APA"). At any time, any party may request that conventional rather than E-Z Trial proceedings be used. Discontinuance of E-Z Trial is at the discretion of the judge after consultation with the Chief Judge. At the conclusion of an E-Z Trial proceeding, a party may file a petition for discretionary review under § 2200.91 if they can establish that they have been materially prejudiced either by the use of E-Z Trial rather than conventional proceedings or by a lack of due process during those proceedings, provided objections to use of the E-Z Trial procedure were raised in a timely fashion to the judge.

DATES: Comments must be received by May 31, 1995.

ADDRESSES: All comments concerning these proposed rules should be addressed to Earl R. Ohman, Jr., General Counsel, One Lafayette Centre, 1120 20th St., NW.—9th Floor, Washington, DC 20036-3419.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606-5410.

SUPPLEMENTARY INFORMATION:

Development of the Proposed Rules

Adjudications by the Occupational Safety and Health Review Commission and its Administrative Law Judges are governed by the regulations published at 29 CFR part 2200—Rules of Procedure. Conventional proceedings are governed by subparts A through G of Part 2200. Simplified proceedings are governed by subpart M. Simplified proceedings differ from conventional proceedings primarily in the following ways: (1) Pleadings generally are not required in simplified proceedings; (2) discovery is generally not permitted; (3) the Federal Rules of Evidence do not apply, as they do in conventional proceedings; and (4) interlocutory appeals are not permitted.

The proposed E-Z Trial program is designed to see that certain cases of lesser magnitude before the Commission are handled in a simple way, to reduce formality and bring down the cost and time demanded of parties in pursuing a case, while protecting due process rights with an "on the record" hearing conducted in accordance with the APA. Cases would be processed promptly. The proposed project would draw in

part from the Commission's current rules for simplified proceedings. As under the current simplified proceedings, required documentation would be minimized and pleadings and discovery would be eliminated completely in most cases. Cases will be reviewed for eligibility for E-Z Trial as soon as possible in order to avoid the filing of pleadings wherever practicable. Under the E-Z Trial program, informal discussions between the parties and the judge would be held to narrow areas of dispute and encourage settlement. If the case is not resolved in a pre-hearing conference, the hearing itself would be comparatively informal in nature, with the format of the hearing being prescribed by the presiding judge. Written briefs would in most cases be replaced by oral argument. Judges would issue bench decisions when appropriate and otherwise would typically issue written decisions within 45 days of the completion of the trial.

Purpose of Subpart M

Under the proposed rule, § 2200.200(b)(1), complaints and answers would not be required for the E-Z Trial process. Section 2200.200(b)(2) would note that, prior to the hearing, discussions among the parties and the judge would be required to narrow and define the issues between the parties. This should encourage case settlement, and accordingly this discussion would be scheduled as soon as possible. Section 2200.200(b)(3) would not allow discovery to be conducted except on the order of the judge. The current rule prohibiting interlocutory appeals, § 2200.211, is incorporated into the proposed rule as § 2200.200(b)(4). Section 2200.200(b)(5) would stress that the hearing is less formal.

Application

Under the proposed rule, § 2200.201 would only note that the rules in Subpart M would apply to proceedings before a judge if an E-Z Trial case is commenced under the rules proposed in § 2200.203.

Eligibility for E-Z Trial

The current eligibility rule, § 2200.202, specifically excludes cases from being tried under simplified proceedings if they involve the merits of an alleged violation of specified standards.¹ Under the proposed rule, § 2200.202 would not specifically

exclude cases that involve any particular standards. The proposed rule does not detail the circumstances in which these procedural rules should be utilized. It anticipates that experience gathered through the E-Z Trial program is the best way to refine the circumstances for which the procedures are suited. Nevertheless, in order to provide some guidance in the initial application of these rule changes, the Commission suggests that cases that might be appropriate for E-Z Trial would generally include those with (1) relatively few citation items, (2) an aggregate proposed penalty not more than \$7500, (3) no allegation of willfulness, (4) a hearing that is expected to take less than two days, or (5) a *pro se* respondent. These criteria are neither rigid nor exhaustive. E-Z Trial should not be selected for technically complex cases requiring discovery or extensive expert testimony.

Procedures for Commencing E-Z Trial

The current rule for simplified proceedings, § 2200.203, allows any party to request simplified proceedings. Under the proposed rule, § 2200.203(a), the Chief Judge can assign an appropriate case for E-Z Trial at his discretion either on his own motion or at the request of a party. In addition, the proposed rule would eliminate the more complex filing requirements found under the current rule which mandates that the request for simplified proceedings be filed with the Executive Secretary and served on all of the following: (i) The employer, (ii) the Secretary of Labor, (iii) any authorized employee representatives and (iv) posted for the benefit of any unrepresented affected employees. Because E-Z Trial can be commenced by the Chief Judge on his own motion, it is not necessary to require complex filing procedures.

Procedures for Discontinuing E-Z Trial

Section 2200.204 sets forth the procedures for discontinuing simplified proceedings after the judge has ordered them implemented. The Commission purposes several changes to this section, which largely parallel the changes proposed in the rule on commencing E-Z Trial. The proposed rule, § 2200.204(a), would require that the judge assigned to the case consult with the Chief Judge prior to discontinuing E-Z Trial. Unlike the current rule, the proposed rule would not necessarily discontinue E-Z Trial even if all parties consent to discontinuance. The current rule's prohibition of interlocutory review (a limited appeal before conclusion of the trial) of simplified

¹ Those standards are: 29 CFR 1910.94, 1910.95, 1910.96, 1910.97, 1910.1000 through 1910.1101, 1926.52, 1926.53, 1926.54, 1926.55, 1926.57, 1926.800(c), and any occupational health standard that may be added to subpart Z of part 1910.