notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Kutztown, PA. A GPS Runway (RWY) 17 SIAP has been developed for Kutztown Airport. Additional controlled airspace extending upward from 700 fee above ground level (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Kutztown, PA [Revised]

Kutztown Airport, PA
(Lat. 40°30′13″ N, long. 75°47′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kutztown Airport and within 3.5 miles northeast and 5.3 miles southwest of the 340° bearing from the airport extending from the 6.5-mile radius to 17 miles northwest of the airport, excluding the portions that coincides with the Allentown, PA, and Reading, PA and Lehighton, PA Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on June 10, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–16465 Filed 6–23–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512–AA07

[Notice No. 853]

Diablo Grande Viticultural Area (97–104)

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of a viticultural area located in the western foothills of Stanislaus County, California to be known as ''Diablo Grande.'' The proposed area occupies over 45 square miles, or approximately 30,000 acres. The petition was submitted by Dr. Vincent E. Petrucci, Sc.D., on behalf of the Diablo Grande Limited Partnership, the principal property owner within the proposed viticultural area and developers of the Diablo Grande Resort Community.

DATES: Written comments must be received by August 25, 1997.

ADDRESSES: Send written comments to : Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 853). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area,

based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of a viticultural area located in the western foothills of Stanislaus County, California to be known as ''Diablo Grande.'' The petition was submitted by Dr. Vincent E. Petrucci, Sc.D., on behalf of the Diablo Grande Limited Partnership, the principal property owner within the proposed viticultural area and developers of the Diablo Grande Resort Community. The proposed area occupies over 45 square miles, or approximately 30,000 acres. According to the petitioner, currently there are 35 acres of grapes planted with an additional 17 acres planned for 1997. The petitioner claims that the proposed area can accommodate an additional 2700 acres of future grape plantings.

Evidence That the Name of the Area is Locally or Nationally Known

According to the petitioner, the name, ''Diablo Grande,'' has been given to this proposed viticultural area because of its proximity to Mount Diablo, the highest mountain peak of the Pacific Coast mountain range. The petitioner claims that the name, ''Diablo Grande,'' has become well-known to the residents of California, and perhaps the nation, because of a multitude of newspaper articles regarding development of the destination resort and residential community in the proposed viticultural area. The resort community has been in existence since the early 1990s. To support the name, the petitioner provided copies of 21 newspaper articles. With the exception of the Golf Course Report, Alexandria, Virginia, all of the articles are from local California newspapers. These articles discuss the development of the resort and the difficulties encountered by the developers in obtaining approval for, and completion of, construction.

There is, however, some evidence that the area occupied by the resort was historically known as the ''Oak Flats Valley.'' Many of the articles submitted by the petitioner refer to the area as the ''Oak Flats Valley Ranch'' or the ''Oak Flats Valley.'' No evidence was provided that the area was tied to Mount Diablo prior to the development of the resort. It should be noted that Mount Diablo is several counties north of Stanislaus County, the location of the proposed area. Therefore, despite the fact the petitioner submitted some evidence justifying the use of the name ''Diablo Grande'' for the proposed area, ATF is soliciting comments on the propriety of using this name.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

As evidence that the boundaries of the proposed viticultural area are as specified in the petition, the petitioner submitted a map titled, ''Stanislaus County Vicinity Map'' drawn by Thompson-Hysell Engineers. The petitioner also submitted a newspaper article from The Modesto Bee dated June 28, 1993, showing the boundary area (map) in respect to Interstate Highway 5, the city of Patterson, the City of Newman, and the Santa Clara County line. The border for ''Diablo Grande'' illustrated on the ''Stanislaus County Vicinity Map'' and the maps in the newspaper article are non specific, giving the general location within Stanislaus County, California. The Modesto Bee article describes the site as being located about five miles west of Interstate 5 and seven miles southwest of Patterson consisting of gently sloping hills to steep ridges in the Diablo Range, an eastern arm of the Coast Ranges. The article further describes the site as encompassing portions of three major watersheds—Orestimba, Crow, and Salado Creeks.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

According to the petitioner, in December, 1990, an automata weather station was installed at the ''Diablo Grande'' test vineyard site by Dr. Charles F. Krauter, professor of soils and water in the Department of Plant Science, California State University, Fresno, California. The recorded data from the weather station includes temperature (maximum, minimum, average, and degree days), rainfall, humidity, solar radiation, wind (speed and direction), and evapotranspiration rate.

The petitioner states that while the above parameters of climate are very important, wine grape regions have been classified according to heat summation units called degree days. The petitioner provided a table of heat summation in degree days illustrating the contrast in temperature between the proposed viticultural area and areas immediately outside the proposed area. The data was taken from four separate weather stations located in Newman (10 miles east), Westley (10 miles north), Tracy (25 miles north) and Modesto (30 miles northeast). The petitioner chose these areas because they were the closest areas with climate records. According to the table, ''Diablo Grande'' is 384 degree days warmer than Modesto, 191 degree days cooler than Newman, 243 degree days cooler than Tracy, and 1022 degree days cooler than Westley. Based on this data the petitioner claims that the grapes from the proposed viticultural area would mature slightly earlier than those grown in Modesto and would mature slightly later than grapes grown in Newman, Westley, or Tracy.

The petitioner has submitted a four year record of rainfall spanning from 1992 to 1995 for the proposed viticultural area. The petitioner provided a table illustrating the contrast in monthly and annual rainfall in inches between the proposed area and areas immediately outside of the proposed area. The rainfall data shows that the proposed area has an annual rainfall 13.8% to 22.6% higher than the other four areas (Newman, Westley, Modesto, and Tracy). The petitioner claims that the higher rainfall in the proposed viticultural area is due to its higher elevation (800 to 2600 feet) as compared to the other four areas which range in elevation from 40 to 300 feet. According to the petitioner, rainfall generally occurs during the winter in all five areas, with little or no rainfall during the summer months.

According to the petitioner, due to its elevation and the protective mountains, the proposed area lies above the fog belt in contrast with areas immediately outside of the proposed area. In the Newman, Patterson, and Westley areas, fog is a common occurrence throughout the rainy season in all but the foothill regions. The petitioner claims that the absence of fog in the proposed area is a unique feature which promotes a much higher quantity of solar radiation resulting in the rate of photosynthesis being maximized providing for better vine growth and a greater leaf canopy surface.

According to the petitioner, the predominant wind directions are from northeast to northwest in the proposed viticultural area due to the orientation of the many mini-valleys encompassing the area and the wind deflection caused by the hills surrounding these mini-valleys. The petitioner claims that this is a unique feature of the proposed viticultural area's micro-climate as

contrasted with the Newman/Westley areas where the reverse is true with the predominant winds coming from the northwest, typical of the flat lands outside of the proposed viticultural area's perimeter.

Soils

According to the petitioner, the soil characteristics of the proposed viticultural area are not only different and distinct from those of the lower foothills and Central Valley to the east and north, but they are also different from other areas of the Diablo Range to the south and west of the proposed viticultural area.

The petitioner provided a general description of the soils in the form of a report entitled, ''Diablo Grande Specific Plan Draft Environmental Impact Report'' prepared by LSA Associates, Inc., Pt. Richmond, California for the Stanislaus County Department of Planning and Community Development. The petitioner also submitted a report from the Soil Conservation Service which recently mapped soils within the proposed viticultural area and identified 16 major soil types.

Finally, the petitioner states that extensive soil sampling and detailed analysis (both physical and chemical) have been conducted at two different locations within the proposed viticultural area. According to the petitioner, in December of 1989, thirteen samples were taken at various sites in the vicinity of the Oak Flat Ranch. In May of 1996, fourteen samples from Isom Ranch were collected and analyzed. A copy of these analysis was included with the petition.

The petitioner claims that these reports show that a majority of the soils found in the proposed viticultural area are composed of the following series listed in approximate order of occurrence: Arburua loam, Wisflat sandy loam, Contra Costa clay loam, and San Timoteo sandy loam, with lesser amounts of Zacharias clay loam and gravelly clay loam. According to the petitioner, most of the soils are complexes made up of two or more of these series as well as occasional rock outcrops of exposed sandstone and shale. The petitioner claims that in these complexes, the soil series are so intimately intermixed that it is not practical to separate them geographically.

The petitioner asserts that the reports show that the soils within the proposed viticultural area typically have slopes ranging from 30% to 75% and elevations from 400 to 2700 feet. An exception is the relatively minor Zacharias series which has slopes of 2% to 5% and elevations of 200 to 400 feet. The soils in the proposed viticultural area are derived from sandstone and vary from shallow to very deep with most of the complexes showing moderate depth. The soils are well-drained to somewhat excessively-drained. Permeability varies from slow to moderately rapid, surface run-off rates are rapid and, according to the petitioner, the potential for water erosion can be severe. The petitioner provided a table giving a complete description of the characteristics for each soil type.

In contrast to the soils of the proposed viticultural area, the petitioner claims that the soils of the surrounding areas are largely composed of different soil series with different characteristics, including elevations and slopes. The petitioner provided an exhibit defining the various soil series and soil types, and an exhibit with aerial photographic maps showing soil type location by map numbers.

While most of the soil series which are found within the proposed viticultural area can also be found in the nearby surrounding areas, the petitioner claims that these series represent very small portions of the total in those surrounding areas. Additionally, the petitioner states that many of the soil series which make up the major soil types of the surrounding areas are not found at all within the proposed area. The petitioner states that these soil types include Capay clay, Vernalis clay loam, Stomar clay loam, Chaqua clay loam, Calla clay loam, Carbona clay, Alo clay, Vaquero clay, El Salado loam and fine sandy loam. According to the petitioner, these series are found to the east and north of the proposed viticultural area. The petitioner states that most of these series have slopes of 0% to 2% and elevations of 25 to 400 feet with four of these series having slopes up to 8%, 15%, 30%, and 50% respectively and elevations from 300 to 1600 feet.

The petitioner states that there is another major difference between the proposed viticultural area soils and most of those to the east and north. The ''Diablo Grande'' soils are residual soils formed from sedimentary deposits of sandstone and calcareous sandstone while most of the surrounding soils are from alluvial deposits of mixed rock parent material having lower slopes and elevations.

According to the petitioner, the area surrounding the proposed viticultural area to the west and south includes the Orestimba Creek Canyon beyond which lies a more rugged portion of the Diablo Range. Much of the land directly west of the proposed area is part of the Henry W. Coe State Park and although this area includes some of the same soil series as the proposed area, there are also many new series including Gonzaga clay, Honker clay, Franciscan clay loam, Vellecitos clay, Gaviota gravelly loam, Henneke clay, Hentine loam, and Hytop clay. The petitioner states that these soils generally have slopes of 30% to 75% and elevations of 700 to 3300 feet.

According to the petitioner, the results of these soil analyses and the characteristics of the soil types found in the proposed viticultural area, in combination with the climate and topography and the use of drip irrigation, not only make the proposed viticultural area suitable for the production of wine grapes but also make it a unique and singular viticultural area which is completely distinctive from the surrounding area.

Topography

According to the petitioner, the geography of the proposed viticultural area sets it apart from the surrounding areas in several respects. Three main water courses traverse the area: Salado Creek, Crow Creek, and Orestimba Creek. Salado and Crow Creek traverse the area from the vicinity of Mikes Peak along the western boundary of the proposed area, northeast and east respectively, toward Interstate 5. Orestimba Creek traverses the southwestern and southern boundary line as it flows eastward.

The petitioner claims that current vineyard plantings are at elevations ranging from 1000 feet msl near the vineyard located in the vicinity of the Oak Flat Ranch to 1800 feet msl at the Isom Ranch. The petitioner states that these vineyard site elevations are the highest elevations where grapes are grown in Stanislaus County. The petitioner contrasts this with other Stanislaus County vineyards outside the proposed area where grapes are grown at elevations ranging from 70 to 90 feet at Modesto to 300 to 340 feet at the base of the foothills near Patterson where a newly planted vineyard (1996) of 90 acres exists approximately 4.2 miles east of the proposed viticultural area boundary. The petitioner distinguishes this vineyard site from the proposed viticultural area by noting that the Patterson site is 340 feet lower and has a soil type which is all Vernalis-Zacharias complex with 0% to 2% slopes. The petitioner claims that these conditions do not exist in the proposed viticultural area.

The petitioner also notes that the topographic features of the proposed viticultural area include many ''mini-

valleys'' as a result of its mountainous structure. The petitioner states that this provides several attributes not found in the vineyards planted on the flat lands in the interior of Stanislaus County. Grapes grown on the terraced hillsides of the proposed area are subject to a mesoclimate (or topoclimate or site climate) which can vary from the general macroclimate due to differences mainly in elevation and slope. Thus, according to the petitioner, site selection becomes an important feature when working with this type of topography as contrasted to the flat lands of 1% to 2% slopes. According to the petitioner, there is the opportunity to grow grapes on slopes (15%–30%) that have western, eastern, southern, or northern exposure or any combination of all four slope exposures.

According to the petitioner, while degree days associated with a macroclimate may be similar to that of a mesoclimate, it is the makeup of the mesoclimate of the proposed viticultural area that makes its climate different from that of the surrounding areas. The petitioner provided a diagram purporting to show how mesoclimates are influenced by sloping contour topography. According to the petitioner, the southern and western slopes receive a greater exposure to sunshine and, therefore, accumulate more heat units than the northern or eastern slopes. The petitioner claims that it is this difference in sunshine and heat that makes the proposed viticultural area's mesoclimate. According to the petitioner, grapes grown on all four slope exposures, when harvested together and crushed as one lot, make wines that differ considerably from grapes grown on the lower elevation flat lands. The petitioner claims that this is the key factor which makes the proposed viticultural area wines distinct from those of the surrounding area. In support of this claim the petitioner provided several letters from staff members at the Viticulture and Enology Research Center, California State University, Fresno and winemakers. These letters indicate that wines made from grapes grown in the proposed viticultural area exhibit characteristics distinctive enough to deserve consideration for a specific appellation.

Boundaries

The boundary of the proposed viticultural area may be found on four United States Geological Survey Quadrangle 7.5 minute series (Topographic) maps, entitled Patterson Quadrangle, California—Stanislaus Co., Copper Mtn. Quadrangle, California—Stanislaus Co., Wilcox Ridge, California, Stanislaus Co., and Orestimba Peak, California—Stanislaus Co.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF is particularly interested in comments concerning the propriety of using the name ''Diablo Grande'' for this proposed viticultural area since there appears to be no evidence that this name was associated with this area prior to the construction of the resort.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8½″ x 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

After consideration of all comments and suggestions, ATF may issue a Treasury decision. The proposals discussed in this notice may be modified due to comments and suggestions received.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (j)) and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive order.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.156 to read as follows:

§ 9.156 Diablo Grande.

(a) Name. The name of the viticultural area described in this section is ''Diablo Grande.''

(b) Approved maps. The appropriate maps for determining the boundary of the Diablo Grande viticultural area are the following four U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps. They are titled:

(1) Patterson Quadrangle, California—Stanislaus Co., 1953 (Photorevised 1971, Photoinspected 1978).

(2) Copper Mtn. Quadrangle, California—Stanislaus Co., 1953 (Field Check 1956, Aerial Photo 1971).

(3) Wilcox Ridge, California—Stanislaus Co., 1956 (Photorevised 1971).

(4) Orestimba Peak, California—Stanislaus Co., 1955 (Photorevised 1971).

(c) Boundary. The Diablo Grande viticultural area is located in the western foothills of Stanislaus County, California. The beginning point is at Reservoir Spillway 780 in section 8, Township 6 South, Range 7 East (T. 6S., R. 7E.) on the Patterson Quadrangle U.S.G.S. map.

(1) Then proceed northwest to Salt Grass Springs to the point where the 1000 foot contour line crosses the northern section line of section 9, T. 6S., R. 6E., on the Copper Mtn., Quadrangle U.S.G.S. map.

(2) Then proceed due south past Copper Mountain in section 16, T. 6S., R. 6E., to Mikes Peak in section 4, T. 7S., R. 6E., on the Wilcox Ridge Quadrangle U.S.G.S. map.

(3) Then proceed due west to Oristimba Creek in section 6, T. 7S., R. 6E.

(4) Then proceed following Orestimba Creek south/southeast and then east/northeast to the point where Orestimba Creek meets Bench Mark #340 in section 28, T. 7S., R. 7E., on the Orestimba Peak Quadrangle U.S.G.S. map.

(5) Then proceed northwest to the point of beginning at Reservoir Spillway 780 in section 8, T. 6S., R. 7E.

Signed: June 13, 1997.

John W. Magaw,

Director.

[FR Doc. 97–16491 Filed 6–23–97; 8:45 am]

BILLING CODE 4810–31–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure for E–Z Trials

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains revisions to the procedural rules governing the E–Z Trial program. These revisions are intended to assist the E–Z Trial process in meeting its objective of allowing parties in less complex cases to argue their cases before the Commission with as few legal formalities as possible.

DATES: Comments must be received by July 24, 1997.

ADDRESSES: All comments concerning these proposed rules should be addressed to Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, 1120 20th Street NW., 9th Floor, Washington, DC 20036–3419..

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

SUPPLEMENTARY INFORMATION: On August 14, 1995, the Occupational Safety and Health Review Commission published in the **Federal Register** (60 FR 41805) new procedural rules for a pilot program designed to simplify and accelerate adjudication for those cases appropriate for a less formal process. Designated ''E–Z Trial,'' the pilot program was to run for one year, beginning on October 1, 1995, and terminating on September 30, 1996, under a ''sunset provision'' unless extended by the Commission. On September 27, 1996, the Commission extended the sunset provision until March 31, 1997, to allow for an evaluation of the pilot program (61 FR 50711). During that period, the Commission held focus groups with parties, including small employers, safety consultants, representatives of employers, and attorneys from the Cleveland office of the Solicitor of Labor, who had participated in E–Z Trial proceedings, The participants were given an opportunity to comment on the E–Z Trial process and to suggest changes that would enable the E–Z Trial program to more effectively achieve its goals. The Commission also solicited comments and experiences from Commission judges who had conducted E–Z Trials. On March 28, 1997, the Commission further extended the sunset provision until July 31, 1997 (62 FR 14821) in order to evaluate the comments it had received about the E–Z Trial program. Based on that evaluation, the Commission has proposed revisions to its procedural rules involving the eligibility of cases for E–Z Trial and mandatory disclosure by the parties. Specifically, the Commission has determined that cases involving fatalities or allegations of repeat violations are not appropriate for E–Z Trial designation, and that cases involving aggregated proposed penalties of more than $10,000, but not more than $20,000, may be designated for E–Z Trial at the discretion of the Chief Administrative Law Judge, if otherwise appropriate. Additionally, the Commission believes that the goal of E–Z Trial is best served by requiring the Secretary to turn over to the employer any photographs or videotapes that the Secretary anticipates using at the hearing. Having received many comments concerning the increased use of videotapes and photographs during inspections, the Commission believes that the disclosure of such evidence will promote fairness and will help expedite the resolution of E–Z Trial cases. The Commission invites comments from the public regarding these proposed changes.

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 continues to read as follows:

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

2. Section 2200.202 is revised to read as follows:

§ 2200.202 Eligibility for E–Z Trial.

(1) 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 or a repeat violation,

(d) not involving a fatality,

(e) a hearing that is expected to take less than two days, or

(f) a small employer whether appearing *pro se* or represented by counsel.

(2) Those cases with an aggregate proposed penalty of more than $10,000, but not more than $20,000, if otherwise appropriate, may be selected for E–Z Trial at the discretion of the Chief Administrative Law Judge.

3. Section 2200.206(a) is revised to read as follows:

§ 2200.206 Disclosure of information.

(a) *Disclosure to employer.* (1) Within 12 working days after a case is designated for E–Z Trial, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1–A) and the worksheet (Form OSHA 1–B), or their equivalents.

(2) Within 30 calendar days after a case is designated for E–Z Trial, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

(3) The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents,