### § 1.333

commissioner participating in the conduct of the hearing.

(b) Hearings before an administrative law judge: By the administrative law judge or, in his absence, by the Chief Administrative Law Judge.

# §1.333 Requests for issuance of subpena.

- (a) Unless submitted on the record while a hearing is in progress, requests for a subpena ad testificandum shall be submitted in writing.
- (b) Requests for a subpena duces tecum shall be submitted in writing, duly subscribed and verified, and shall specify with particularity the books, papers, and documents desired and the facts expected to be proved thereby. Where the subpena duces tecum request is directed to a nonparty to the proceeding, the presiding officer may issue the same, upon request, without an accompanying subpena to enforce a notice to take depositions, provided for in paragraph (e) of this section, where it appears that the testimony of said person is not required in connection with the subpena duces tecum.
- (c) All requests for subpenas shall be supported by a showing of the general relevance and materiality of the evidence sought.
- (d) Requests for subpenas shall be submitted in triplicate, but need not be served on the parties to the proceeding.
- (e) Requests for issuance of a subpena ad testificandum to enforce a notice to take depositions shall be submitted in writing. Such requests may be submitted with the notice or at a later date. The request shall not be granted until the period for the filing of motions opposing the taking of depositions has expired or, if a motion has been filed, until that motion has been acted on. Regardless of the time when the subpena request is submitted, it need not be accompanied by a showing that relevant and material evidence will be adduced, but merely that the person will be examined regarding a nonprivileged matter which is relevant to the hearing issues. The subpena request may ask that a subpena duces tecum be contemporaneously issued commanding the person to whom it is directed to produce designated books, papers, documents, or tangible things

which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by §1.311(b) but in that event the subpena request will be subject to the provisions of §1.313 and paragraph (b) of this section.

(f) Requests for issuance of a subpena duces tecum to enforce an order for the production of documents and things for inspection and copying under §1.325 may be submitted with the motion requesting the issuance of such an order. Regardless of the time when the subpena request is submitted, it need not be accompanied by a showing that relevant and material evidence will be adduced, but merely that the documents and things to be examined contain non-privileged matter which is relevant to the subject matter of the proceeding.

[28 FR 12425, Nov. 22, 1963, as amended at 33 FR 466, Jan. 12, 1968; 47 FR 51873, Nov. 18, 1982]

#### §1.334 Motions to quash.

Any person against whom a subpena is directed may file a motion to quash or limit the subpena, setting forth the reasons why the subpena should not be complied with or why it should be limited in scope.

# §1.335 Rulings.

Prompt notice, including a brief statement of the reasons therefor, will be given of the denial, in whole or in part, of a request for subpena or of a motion to quash.

## §1.336 Service of subpenas.

- (a) A subpena may be served by a United States marshal or his deputy, by Commission personnel, or by any person who is not a party to the proceeding and is not less than 18 years of age.
- (b) Service of a subpena upon the person named therein shall be made by exhibiting the original subpena to him, by reading the original subpena to him if he is unable to read, by delivering the duplicate subpena to him, and by tendering to him the fees for one day's attendance at the proceeding to which he is summoned and the mileage allowed by law. If the subpena is issued