

### § 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 subpoena.

(a) Unless submitted on the record while a hearing is in progress, requests for a subpoena ad testificandum shall be submitted in writing.

(b) Requests for a subpoena *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 subpoena *duces tecum* request is directed to a nonparty to the proceeding, the presiding officer may issue the same, upon request, without an accompanying subpoena 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 subpoena *duces tecum*.

(c) All requests for subpoenas shall be supported by a showing of the general relevance and materiality of the evidence sought.

(d) Requests for subpoenas shall be submitted in triplicate, but need not be served on the parties to the proceeding.

(e) Requests for issuance of a subpoena 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 subpoena 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 subpoena request may ask that a subpoena *duces tecum* be contemporaneously issued commanding the person to whom it is directed to produce designated books, papers, documents, or tangible things

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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 subpoena request will be subject to the provisions of § 1.313 and paragraph (b) of this section.

(f) Requests for issuance of a subpoena *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 subpoena 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 nonprivileged 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 subpoena is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena 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 subpoena or of a motion to quash.

#### § 1.336 Service of subpoenas.

(a) A subpoena 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 subpoena upon the person named therein shall be made by exhibiting the original subpoena to him, by reading the original subpoena to him if he is unable to read, by delivering the duplicate subpoena 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 subpoena is issued