the request are stated as being, in the possession of the other party. Each matter of which an admission is requested shall be separately set forth. A copy of the request shall be filed with the Secretary.

(b) The matter is admitted unless, within ten (10) days after service of the request, or within such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves upon the party requesting the admission, with a copy filed with the Secretary, a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set fourth reasons why the party cannot admit or deny it.

(c) Any matter admitted under this rule is conclusively established unless the Administrative Law Judge on motion permits withdrawal or amendment of the admission. The Administrative Law Judge may permit withdrawal or amendment when the presentation of the merits of the proceeding will be subserved thereby and the party who obtained the admission fails to satisfy the Administrative Law Judge that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

[43 FR 56865, Dec. 4, 1978, as amended at 50 FR 53305, Dec. 31, 1985]

§ 3.33 Depositions.

(a) *In general.* Any party may take a deposition of a named person or of a person or persons described with reasonable particularity, provided that such deposition is reasonably expected to yield information within the scope of discovery under § 3.31(c)(1). Such party may, by motion, obtain from the Administrative Law Judge an order to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence would not otherwise be available for presentation at the hearing. Depositions may be taken before any person having power to administer oaths, either under the law of the United States or of the state or other place in which the deposition is taken, who may be designated by the party seeking the deposition, provided that such person shall have no interest in the outcome of the proceeding. The party seeking the deposition shall serve upon each person whose deposition is sought and upon each party to the proceeding reasonable notice in writing of the time and place at which it will be taken, and the name and address of each person or persons to be examined, if known, and if the name is not known, a description sufficient to identify them. The parties may stipulate in writing or the Administrative Law Judge may upon motion order that a deposition be taken by telephone or other remote electronic means. A deposition taken by such means is deemed taken at the place where the deponent is to answer questions.

(b) [Reserved]

(c) *Notice to corporation or other organization.* A party may name as the deponent a public or private corporation, partnership, association, governmental agency other than the Federal Trade Commission, or any bureau or regional office to the Federal Trade Commission, and describe with reasonable particularity the matters on which examination is requested. The organization

so names shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any party shall have the right to question him. Objections to questions or to evidence presented shall be in short form, stating the grounds of objections relied upon. The questions propounded and the answers thereto, together with all objections made, shall be recorded and certified by the officer. Thereafter, upon payment of the charges therefor, the officer shall furnish a copy of the deposition to the deponent and to any party.

(e) *Depositions upon written questions.* A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(1) The name and address of the person who is to answer them, and

(2) The name or descriptive title and address of the officer before whom the deposition is to be taken.

A deposition upon written questions may be taken of a public or private corporation, partnership, association, governmental agency other than the Federal Trade Commission, or any bureau or regional office of the Federal Trade Commission in accordance with the provisions of Rule 3.33(c). Within 30 days after the notice and written questions are served, any other party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, the party taking the deposition may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, any other party may serve recross questions upon all other parties. The content of any question shall not be disclosed to the deponent prior to the taking of the deposition. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly to take the testimony of the deponent in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(f) *Correction of deposition.* A deposition may be corrected, as to form or substance, in the manner provided by § 3.44(b). Any such deposition shall, in addition to the other required procedures, be read to or by the deponent and signed by him, unless the parties by stipulation waive the signing or the deponent is unavailable or cannot be found or refuses to sign. If the deposition is not signed by the deponent within 30 days of its submission or attempted submission, the officer shall sign it and certify that the signing has been waived or that the deponent is unavailable or that the deponent has refused to sign, as the case may be, together with the reason for the refusal to sign, if any has been given. The deposition may then be used as though signed unless, on a motion to suppress under Rule 3.33(g)(3)(iv), the Administrative Law Judge determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. In addition to and not in lieu of the procedure for formal correction of the deposition, the deponent may enter in the record at the time of signing a list of objections to the transcription of his remarks, stating with specificity the alleged errors in the transcript.

(g)(1) *Use of depositions in hearings.* At the hearing on the complaint or upon a motion, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(i) Any deposition may be used for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(ii) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership or association which is a party, or of an official or employee (other than a special employee) of the Commission, may be used by an adverse party for any purpose.

(iii) A deposition may be used by any party for any purpose if the Administrative Law Judge finds:

(A) That the deponent is dead; or

(B) That the deponent is out of the United States or is located at such a distance that his attendance would be impractical, unless it appears that the absence of the deponent was procured by the party offering the deposition; or

(C) That the deponent is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(D) That the party offering the deposition has been unable to procure the attendance of the deponent by subpoena; or

(E) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(iv) If only part of a deposition is offered in evidence by a party, any other party may introduce any other part which ought in fairness to be considered with the part introduced.

(2) *Objections to admissibility*. Subject to the provisions of paragraph (g)(3) of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) *Effect of errors and irregularities in depositions*—(i) *As to notice*. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(ii) *As to disqualification of officer*. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(iii) *As to taking of deposition*. (A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions are waived unless served in writing upon all parties within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(iv) *As to completion and return of deposition*. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, endorsed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or with due diligence might have been ascertained.

[43 FR 56865, Dec. 4, 1978, as amended at 61 FR 50648, Sept. 26, 1996; 66 FR 17629, Apr. 3, 2001]

§ 3.34 Subpoenas.

(a) *Subpoenas ad testificandum*—(1) *Prehearing*. The Secretary of the Commission shall issue a subpoena, signed but otherwise in blank, requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena, who shall complete it before service.