condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service shall be made pursuant to the provisions of Rule 150(b)–(d). The provisions of this paragraph (c) shall apply to the issuance of subpoenas for purposes of investigations, as required by 17 CFR 203.8, as well as hearings.

(d) *Tender of fees required.* When a subpoena compelling the attendance of a person at a hearing or deposition is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by paragraph (f) of this rule.

(e) *Application to Quash or Modify. (1) Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to Rule 150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

(2) *Standards Governing Application to Quash or Modify.* If compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or the Commission shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(f) *Witness Fees and Mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

Comment (a): Rule 232 requires that, unless made on the record at a hearing, subpoena requests must be in writing. *Ex parte,* oral communication with the hearing officer concerning the need for issuance of a subpoena creates the opportunity for unintended and potentially improper discussion of the merits of a case.

Comment (b): Rule 232(b) is based upon Section 555(d) of the Administrative Procedure Act, 5 U.S.C. 555(d).

Revision Comment: Under the former Rule 14 of the Rules of Practice and the proposed rules, neither the fact that a subpoena was sought nor the identity of the person subpoenaed was disclosed. Comment was requested as to whether the identity of the persons subpoenaed should be disclosed to other parties, and if so, when such disclosure should take place. One commenter suggested that the identity of persons subpoenaed should be disclosed to all other parties and an application to quash should be served on all parties. The Commission believes that these suggestions are consistent with other changes made to increase the prehearing exchange of information. Accordingly, Rule 232 has been revised to incorporate these suggestions.

Commenters also suggested that respondents be allowed to issue subpoenas for the purpose of compelling prehearing discovery depositions as is allowed in actions under the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 30(a)(1). Discovery under the Federal Rules of Civil Procedure, including deposition practice, is often a source of delay, extensive collateral disputes and high litigation costs. *See Fair and Efficient Administrative Proceedings: Report of the Task Force on Administrative Proceedings* (1993) at 47–48. One commenter suggested that the disadvantages of oral deposition practice under the Federal Rules of Civil Procedure could be avoided by permitting depositions only by order of the hearing officer; by limiting each respondent to five depositions, unless additional depositions were approved by the hearing officer; and by requiring all depositions to be completed within 90 days of the close of document discovery.

The Commission has weighed the arguments advanced in favor of expanding the scope of prehearing discovery to permit oral depositions as suggested and has concluded that a rule authorizing discovery depositions is not warranted.

First, the Commission's experience in federal court litigation strongly suggests that notwithstanding the proposed restriction for the use of discovery depositions, there remains a significant potential for extensive collateral litigation over their use. Under the commenter's proposal, for example, each respondent could seek leave to take more than five depositions, and might contest, through motions for interlocutory review and arguments on appeal, any denial of additional depositions by the hearing officer.

Second, the suggestion to limit depositions to the 90-day period after the close of ''document discovery'' conflicts with the statutory timetable for cease-and-desist proceedings, the fastest growing category of enforcement proceedings. When a cease-and-desist order is sought, the Commission is required to set a hearing date not earlier than 30 days nor later than 60 days after service of the order instituting proceedings, unless an earlier or a later date is set by the Commission with the consent of a respondent. *See, e.g.,* Exchange Act 21C(b), 15 U.S.C. § 78u–3(b). In a proceeding with multiple respondents, one respondent's decision not to consent to a later hearing date, or to consent to an extension less than that sought by other respondents, would give rise to difficult and time-consuming collateral issues over scheduling, and could necessitate multiple hearings. Even without such complications, a 90-day period for depositions, in addition to a period for inspection and copying of documents, would represent a significant departure from the statute.

Third, the rationale for permitting oral depositions in litigation under the Federal Rules of Civil Procedure does not apply equally to a Commission administrative proceeding. In the typical civil action, where neither party can compel testimony prior to the filing of the complaint, oral depositions play a critical role in permitting evidence to be gathered prior to trial. Also, a plaintiff in the typical civil action is not required before filing to vet a proposed