

issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. Where it appears to the presiding officer that a subpoena may be unreasonable, oppressive, excessive in scope, unduly burdensome, or delay the proceeding, the presiding officer has discretion to refuse to issue a subpoena or to issue it only upon such conditions as fairness requires.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date the subpoena was served, with notice to the party requesting the subpoena, apply to the presiding officer, or in the event he or she is unavailable to the Board, to quash or modify the subpoena, accompanying such application with a brief statement of the reasons therefor. The presiding officer may deny the application or, upon notice to the party on whose behalf the subpoena was issued and after affording that party an opportunity to reply, may quash or modify the subpoena or impose reasonable conditions including, in the case of a subpoena duces tecum, a requirement that the party on whose behalf the subpoena was issued pay in advance the reasonable cost of copying and transporting the documentary evidence to the designated place.

(c) *Service of subpoena.* A subpoena may be served upon the person named therein by personal service or certified mail with a return receipt to the last known address of the person. The fees for one day's attendance and mileage as specified in paragraph (d) of this section must be tendered at the time of service unless the subpoena is issued on behalf of the FCA. If personal service is made by a U.S. marshal, a deputy U.S. marshal, or an employee of the FCA, such service shall be evidenced by the return thereon. If personal service is made by any other person, such person shall sign an affidavit describing the manner in which service is made, and return such affidavit with a copy of the subpoena. In case of failure to make service, reasons for the failure shall be stated on the original subpoena. The original or a copy of the subpoena, bearing or accompanied by the required

return, affidavit, statement or return receipt, shall be returned without delay to the presiding officer.

(d) *Attendance of witnesses.* The attendance of witnesses at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. Witnesses who are subpoenaed shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Fees required by this paragraph shall be paid by the party upon whose application the subpoena is issued.

(e) *Production of documents.* The production of documents at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. In lieu of an original document, a certified or authenticated copy may be produced. However, any party has the right to inspect the original document.

§ 622.10 Depositions.

(a) *Application to take deposition.* Any party desiring to take the deposition of any person shall make written application to the presiding officer setting forth the name and address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time and place of the deposition, and the reasons why such deposition should be taken. The application may include a request that specified documents be produced at the deposition. A copy of the application shall be served on the other parties at the same time the application is filed with the presiding officer.

(b) *Subpoena; notice to other parties.* Upon a showing that the testimony or other evidence sought will be material, and the taking of the deposition will not result in any undue burden to the witness or any party or undue delay of the proceedings, the presiding officer may issue a subpoena or subpoena duces tecum. Notice of the issuance of such subpoena shall be served upon all parties at least 10 days in advance of the date set for deposition.

(c) *Deposition by notice.* The requirements of paragraphs (a) and (b) of this section may be waived by agreement of the parties and the witness whose testimony or documentary evidence is

sought. Such agreement shall be embodied in a stipulation which becomes part of the record and may provide for the taking of depositions upon notice without leave of the presiding officer.

(d) *Procedure on deposition.* Depositions may be taken before any person having the power to administer oaths. Each witness whose testimony is taken by deposition shall be duly sworn before any question is propounded. Examination and cross-examination of deponents may proceed as permitted at the hearing. Objections to questions or documents shall be in short form, stating the grounds relief upon for the objection. Failure to object to questions or evidence is deemed a waiver if the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate) shall be recorded by or under the direction of the person before whom the deposition is taken. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is physically unable to sign, cannot be found, or refuses to sign. The deposition shall also be certified as a true and complete transcript by the person recording the testimony. If the deposition is not signed by the witness, the person recording the testimony shall state this fact and the reason therefor on the record. The person before whom the deposition is taken shall promptly file the transcript and all exhibits with the presiding officer. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits.

(e) *Introduction as evidence.* Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying at the hearing, the deposition or any part thereof may be received in evidence by the presiding officer in his or her discretion. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record upon which a decision may be based.

(f) *Payment of fees.* Deponents whose depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for like services in the district courts of the United States, which fees shall be paid by the party upon whose application the deposition is taken.

§ 622.11 Motions.

(a) *How made.* An application or request for an order or ruling not otherwise specifically provided for in this subpart, unless made during a hearing, shall be made by written motion supported by a memorandum which concisely states the grounds therefor.

(b) *Opposition.* Within 10 days after service of any written motion, or within such other period of time as may be fixed by the presiding officer, any party may file a memorandum in opposition thereto. The moving party has no right to reply except as permitted by the presiding officer. The presiding officer has discretion to waive the requirements of this section as to motions for extension of time and may rule upon such motions *ex parte*.

(c) *Oral argument.* No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board.

(d) *Rulings and orders.* Except as otherwise provided in this subpart, the presiding officer shall rule on all motions and may issue appropriate orders, except that motions may be referred to the Board if the presiding officer is unavailable or determines that such motion should be referred to the Board. Prior to the appointment of a presiding officer and after a recommended decision is filed pursuant to § 622.12, the Board shall rule on motions filed by the parties.

(e) *Appeal from rulings on motions.* All answers, motions, objections and rulings shall become part of the record. Rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, except by special permission of the Board. However, such rulings shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from a ruling of the presiding officer shall be