

§ 1025.19

The orders may be combined with a prehearing order under § 1025.21 of these rules and may be altered or amended as may be necessary.

(g) *Scope of final order.* In any proceedings maintained as a class action, any Decision and Order of the Presiding Officer or the Commission under § 1025.51 or § 1025.55, as applicable, whether or not favorable to the class, shall include and describe those respondents whom the Presiding Officer or the Commission finds to be members of the class.

(h) *Notice of results.* Upon the termination of any adjudication that has been maintained as a class action, the best notice practicable of the results of the adjudication shall be given to all members of the class in such manner as the Presiding Officer or the Commission directs.

§ 1025.19 Joinder of proceedings.

Two or more matters which have been scheduled for adjudicative proceedings and which involve similar issues may be consolidated for the purpose of hearing or Commission review. A motion for consolidation may be filed by any party to such proceedings not later than thirty (30) days prior to the hearing and served upon all parties to all proceedings in which joinder is contemplated. The motion may include a request that the consolidated proceedings be maintained as a class action in accordance with § 1025.18 of these rules. The proceedings may be consolidated to such extent and upon such terms as may be proper. Such consolidation may also be ordered upon the initiative of the Presiding Officer or the Commission. Single representatives may be designated by represented parties, intervenors, and participants with an identity of interests.

Subpart C—Prehearing Procedures, Motions, Interlocutory Appeals, Summary Judgments, Settlements

§ 1025.21 Prehearing conferences.

(a) *When held.* Except when the presiding officer determines that unusual circumstances would render it impractical or valueless, a prehearing con-

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ference shall be held in person or by conference telephone call within fifty (50) days after publication of the complaint in the FEDERAL REGISTER and upon ten (10) days' notice to all parties and participants. At the prehearing conference any or all of the following shall be considered:

- (1) Petitions for leave to intervene;
 - (2) Motions, including motions for consolidation of proceedings and for certification of class actions;
 - (3) Identification, simplification and clarification of the issues;
 - (4) Necessity or desirability of amending the pleadings;
 - (5) Stipulations and admissions of fact and of the content and authenticity of documents;
 - (6) Oppositions to notices of depositions;
 - (7) Motions for protective orders to limit or modify discovery;
 - (8) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;
 - (9) Limitation of the number of witnesses, particularly to avoid duplicate expert witnesses;
 - (10) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and consumer product safety rules;
 - (11) Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into evidence;
 - (12) Consideration of offers of settlement;
 - (13) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties; and
 - (14) Such other matters as may aid in the efficient presentation or disposition of the proceedings.
- (b) *Public notice.* The Presiding Officer shall cause a notice of the first prehearing conference, including a statement of the issues, to be published in the FEDERAL REGISTER at least ten (10) days prior to the date scheduled for the conference.

(c) *Additional conferences.* Additional prehearing conferences may be convened at the discretion of the Presiding Officer, upon notice to the parties, any participants, and to the public.

(d) *Reporting.* Prehearing conferences shall be stenographically reported as provided in §1025.47 of these rules and shall be open to the public, unless otherwise ordered by the Presiding Officer or the Commission.

(e) *Prehearing orders.* The Presiding Officer shall issue a final prehearing order in each case after the conclusion of the final prehearing conference. The final prehearing order should contain, to the fullest extent possible at that time, all information which is necessary for controlling the course of the hearing. The Presiding Officer may require the parties to submit a jointly proposed final prehearing order, such as in the format set forth in appendix I.

§ 1025.22 Prehearing briefs.

Not later than ten (10) days prior to the hearing, unless otherwise ordered by the Presiding Officer, the parties may simultaneously serve and file prehearing briefs which should set forth:

(a) A statement of the facts expected to be proved and of the anticipated order of proof;

(b) A statement of the issues and the legal arguments in support of the party's contentions with respect to each issue; and

(c) A table of authorities relied upon.

§ 1025.23 Motions.

(a) *Presentation and disposition.* During the time a matter in adjudication is before the Presiding Officer, all motions, whether oral or written, except those filed under §1025.42(e), shall be addressed to the Presiding Officer, who shall rule upon them promptly, after affording an opportunity for response.

(b) *Written motions.* All written motions shall state with particularity the order, ruling, or action desired and the reasons why the action should be granted. Memoranda, affidavits, or other documents supporting a motion shall be served and filed with the motion. All motions shall contain a proposed order setting forth the relief sought. All written motions shall be

filed with the Secretary and served upon all parties, and all motions addressed to the Commission shall be in writing.

(c) *Opposition to motions.* Within ten (10) days after service of any written motion or petition or within such longer or shorter time as may be designated by these Rules or by the Presiding Officer or the Commission, any party who opposes the granting of the requested order, ruling or action may file a written response to the motion. Failure to respond to a written motion may, in the discretion of the Presiding Officer, be considered as consent to the granting of the relief sought in the motion. Unless otherwise permitted by the Presiding Officer or the Commission, there shall be no reply to the response expressing opposition to the motion.

(d) *Rulings on motions for dismissal.* When a motion to dismiss a complaint or a motion for other relief is granted, with the result that the proceedings before the Presiding Officer are terminated, the Presiding Officer shall issue an Initial Decision and Order in accordance with the provisions of §1025.51. If such a motion is granted as to all issues alleged in the complaint in regard to some, but not all, respondents or is granted as to any part of the allegations in regard to any or all respondents, the Presiding Officer shall enter an order on the record and consider the remaining issues in the Initial Decision. The Presiding Officer may elect to defer ruling on a motion to dismiss until the close of the case.

§ 1025.24 Interlocutory appeals.

(a) *General.* Rulings of the Presiding Officer may not be appealed to the Commission prior to the Initial Decision, except as provided in this section.

(b) *Exceptions.* (1) Interlocutory appeals to Commission. The Commission may, in its discretion, consider interlocutory appeals where a ruling of the Presiding Officer:

(i) Requires the production of records claimed to be confidential;

(ii) Requires the testimony of a supervisory official of the Commission other than one especially knowledgeable of the facts of the matter in adjudication;