consider, in addition to all other relevant matters, the following factors:

(1) The nature and extent of the person's alleged interest in the proceedings;

(2) The possible effect of any final order which may be entered in the proceedings on the person's interest; and

(3) The extent to which the person's participation can be expected to assist the Presiding Officer and the Commission in rendering a fair and equitable resolution of all matters in controversy in the proceedings.

The Presiding Officer may deny a request to participate if he/she determines that the person's participation cannot reasonably be expected to assist the Presiding Officer or the Commission in rendering a fair and equitable resolution of matters in controversy in the proceedings or if he/she determines that the person's participation would unduly broaden the issues in controversy or unduly delay the proceedings.

(f) *Designation of single representative.* If the Presiding Officer determines that a petitioner pursuant to paragraph (a) of this section or a person requesting to participate pursuant to paragraph (b) of this section is a member of a class of prospective intervenors or participants, as applicable, who share an identity of interest, the Presiding Officer may limit such intervention or participation, as applicable, through designation of a single representative by the prospective intervenors or participants, as applicable, or, if they are unable to agree, by designation of the Presiding Officer.

§ 1025.18 Class actions.

(a) *Prerequisites to a class action.* One or more members of a class of respondents may be proceeded against as representative parties on behalf of all respondents if:

(1) The class is so numerous or geographically dispersed that joinder of all members is impracticable;

(2) There are questions of fact or issues of law common to the class;

(3) The defenses of the representative parties are typical of the defenses of the class; and

(4) The representative parties will fairly and adequately protect the interests of the class.

(b) *Composition of class.* A class may be composed of:

(1) Manufacturers, distributors, or retailers, or a combination of them, of products which allegedly have the same defect, or

(2) Manufacturers, distributors, or retailers, or a combination of them, of products which allegedly fail to conform to an applicable standard, regulation, or consumer product safety rule, or

(3) Manufacturers, distributors, or retailers, or a combination of them, who have themselves allegedly failed to conform to an applicable standard, regulation, or consumer product safety rule.

When appropriate, a class may be divided into subclasses and each subclass shall be treated as a class.

(c) *Notice of commencement.* A complaint issued under this section shall identify the class, the named respondents considered to be representative of the class, and the alleged defect or nonconformity common to the products manufactured, imported, distributed or sold by the members of the class. The complaint shall be served upon the parties in accordance with § 1025.16.

(d) *Proper class action determination.* Upon motion of Complaint Counsel and as soon as practicable after the commencement of any proceedings brought as a class action, the Presiding Officer shall determine by order whether the action is a proper class action. It is a proper class action if the prerequisites of paragraph (a) of this section are met and if the Presiding Officer finds that:

(1) The prosecution of separate actions against individual members of the respondent class might result in (i) inconsistent or varying determinations with respect to individual members of the class which might produce incompatible or conflicting results, or (ii) determinations with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members who are not parties to the proceedings or would substantially impair or impede the ability of the absent members to protect their interests; or

(2) The Commission has acted on grounds generally applicable to the class, thereby making appropriate an order directed to the class as a whole.

In reaching a decision, the Presiding Officer shall consider the interests of members of the class in individually controlling the defense of separate actions, the extent and nature of any proceedings concerning the controversy already commenced against members of the class, the desirability or undesirability of concentrating the litigation in one adjudication, and the difficulties likely to be encountered in the management of a class action, as well as the benefits expected to result from the maintenance of a class action.

(e) *Revision of class membership*. Upon motion of any party or any member of the class, or upon the Presiding Officer's own initiative, the Presiding Officer may revise the membership of the class.

(f) *Orders in conduct of class actions*. In proceedings to which this section applies, the Presiding Officer may make appropriate orders:

(1) Determining the course of the proceedings or prescribing measures to prevent undue repetition and promote the efficient presentation of evidence or argument;

(2) Requiring (for the protection of the members of the class, or otherwise for the fair conduct of the action) that notice be given, in such manner as the Presiding Officer may direct, of any step in the action, of the extent of the proposed order, or of the opportunity for members to inform the Presiding Officer whether they consider the representation to be fair and adequate, or of the opportunity for class members to intervene and present defenses;

(3) Requiring that the pleadings be amended to eliminate allegations concerning the representation of absent persons; or

(4) Dealing with other procedural matters.

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 conference 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: