

## § 1025.22

- (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 oth-

## 16 CFR Ch. II (1-1-02 Edition)

erwise 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;

(iii) Excludes an attorney from participation in any proceedings pursuant to §1025.42(b);

(iv) Denies or unduly limits a petition for intervention pursuant to the provisions of §1025.17.

(2) Procedure for interlocutory appeals. Within ten (10) days of issuance of a ruling other than one ordering the production of records claimed to be confidential, any party may petition the Commission to consider an interlocutory appeal of a ruling in the categories enumerated above. The petition shall not exceed fifteen (15) pages. Any other party may file a response to the petition within ten (10) days of its service except where the order appealed from requires the production of records claimed to be confidential. The response shall not exceed fifteen (15) pages. The Commission shall decide the petition or may request such further briefing or oral presentation as it deems necessary.

(3) If the Presiding Officer orders the production of records claimed to be confidential a petition for interlocutory appeal shall be filed within five (5) days of the entry of the order. Any opposition to the petition shall be filed within five (5) days of service of the petition. The order of the Presiding Officer shall be automatically stayed until five (5) days following the date of entry of the order to allow an affected party the opportunity to file a petition with the Commission for an interlocutory appeal pursuant to §1025.24(b)(2). If an affected party files a petition with the Commission pursuant to §1025.24(b)(2) within the 5-day period, the stay of the Presiding Officer's order is automatically extended until the Commission decides the petition.

(4) *Interlocutory appeals from all other rulings—(i) Grounds.* Interlocutory appeals from all other rulings by the Presiding Officer may proceed only upon motion to the Presiding Officer and a determination by the Presiding Officer in writing that the ruling involves a controlling question of law or policy as to which there is substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation, or that subsequent review will be an inadequate remedy. The Presiding Officer's certification shall state the reasons for the determination.

(ii) *Form.* If the Presiding Officer makes the determination described in