materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application.''

(b) In the absence of specific provisions in these rules, and where appropriate, questions arising at any stage of the proceedings shall be resolved at the discretion of the Presiding Officer, the Regional Administrator, or the Administrator, as appropriate.

§ 223.3 Preliminary determination; notice.

(a) *General.* Any general, special, emergency, interim or research permit issued pursuant to section 102 of the Act shall be subject to revision, revocation or limitation, in whole or in part, as the result of a determination by the Administrator or Regional Administrator that:

(1) The cumulative impact of the permittee's dumping activities or the aggregate impact of all dumping activities at the dump site designated in the permit should be categorized as Impact Category I, as defined in § 228.10(c)(1) of this subchapter; or

(2) There has been a change in circumstances relating to the management of the disposal site designated in the permit; or

(3) The dumping authorized by the permit would violate applicable water quality standards; or

(4) The dumping authorized by the permit can no longer be carried out consistent with the criteria set forth in parts 227 and 228.

(b) *Preliminary determination.* Whenever any person authorized by the Administrator or Regional Administrator to (1) periodically review permits pursuant to section 104(d) of the Act or (2) otherwise assess the need for revision, revocation or limitation of a permit makes any of the determinations listed in paragraph (a) of this section with respect to a permit issued pursuant to section 102 of the Act, and additionally determines that revision, revocation or limitation of such permit is warranted, the Administrator or Regional Administrator, as the case may be, shall provide notification of such proposed revision, revocation or limitation to the permittee named in the permit, if any, the public, and any cognizant Federal/State agencies pursuant to paragraph (c) of this section.

(c) *Form of notification.* Notice of any proposed revision, revocation or limitation of a permit shall be sent to the permittee by certified mail, return receipt requested, and shall be published and otherwise disseminated in the manner described in § 222.3 (b) through (h).

(d) *Contents of notice.* The notice of any proposed revision, revocation or limitation of a permit issued pursuant to paragraph (b) of this section shall include, in addition to any other materials, the following:

(1) A brief description of the contents of the permit, as set forth in § 223.1;

(2) A description of the proposed revision, revocation, or limitation;

(3) A statement of the reason for such proposed revision, revocation, or limitation; and

(4) A statement that within thirty (30) days of the date of dissemination of the notice, any person may request a public hearing on the proposed revision, revocation or limitation.

§ 223.4 Request for, scheduling and conduct of public hearing; determination.

(a) *Request for hearing.* Within thirty (30) days of the date of the dissemination of any notice required by § 223.2(b), any person may request the Administrator or Regional Administrator, as appropriate, to hold a public hearing on the proposed revision, revocation or limitation by submitting a written request containing the following:

(1) Identification of the person requesting the hearing and his interest in the proceeding;

(2) A statement of any objections to the proposed revision, revocation or limitation or to any facts or reasons identified as supporting such revision, revocation or limitation; and

(3) A statement of the issues which such person proposes to raise for consideration at such hearing.

(b) *Grant or denial of hearing; notification.* Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received, and the Administrator or Regional Administrator, as appropriate, determines that such request presents

genuine issues, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that a public hearing is necessary or appropriate, the Administrator or Regional Administrator, as the case may be, will set a time and place for a public hearing in accordance with paragraph (c) of this section and will give notice of such hearing by publication in accordance with § 223.3(c). In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of paragraph (a) or that such request does not present genuine issues, he shall advise, in writing, the person requesting the hearing of his determination.

(c) *Time and place of hearing.* Any hearing authorized pursuant to this Section by the Administrator or Regional Administrator, as the case may be, shall be held in the city in which the Environmental Protection Agency Regional Office which issued the permit is located, whenever practicable, and shall be set for the earliest practicable date, but in no event less than thirty (30) days after the receipt of an appropriate request for a hearing or a determination by the Administrator or the Regional Administrator, as the case may be, to hold such a hearing without such a request.

(d) *Presiding Officer.* Any hearing convened pursuant to this part shall be conducted by a Presiding Officer, who shall be either a Regional Judicial Officer or a person having the qualifications of the members of the Environmental Appeals Board (described in 40 CFR 1.25(e)) if assigned by the Administrator or the qualifications of a Regional Judicial Officer if assigned by the Regional Administrator, as appropriate. Such person shall be an attorney who is a permanent or temporary employee of the Agency, who is not employed by the Region's or Headquarter's Water Programs Division, Surveillance and Analysis Division, or Enforcement Division, and who has had no connection with the preparation or presentation of evidence for any hearing in which he participates as Judicial Officer.

(e) *Conduct of the public hearing.* The Presiding Officer shall be responsible for the expeditious conduct of the hearing. The hearing shall be an informal public hearing, not an adversary proceeding, and shall be conducted so as to allow the presentation of public comments. When the Presiding Officer determines that it is necessary or appropriate, he shall cause a suitable record, which may include a verbatim transcript, of the proceedings to be made. Any person may appear at a public hearing convened pursuant to this section whether or not he requested the hearing, and may be represented by counsel or any other authorized representative. The Presiding Officer is authorized to set forth reasonable restrictions on the nature or amount of documentary material or testimony presented at a public hearing, giving due regard to the relevancy of any such information, and to the avoidance of undue repetitiveness of information presented.

(f) *Recommendations of Presiding Officer.* Within 30 days following the adjournment of a public hearing convened pursuant to this section or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, and after full consideration of the comments received at the hearing, the Presiding Officer will prepare and forward to the Administrator or to the Regional Administrator, as the case may be, written recommendations relating to the revision, revocation or limitation of the permit and the record of the hearing, if any. Such recommendations shall contain a brief statement of the basis therefor, including a description of evidence relied upon (1) to support any finding made pursuant to § 223.3(a); (2) to justify any proposed revision, revocation or limitation of the permit; and (3) to justify any proposed revision, revocation or limitation which differs from that set forth in the notice issued pursuant to § 223.3(b). Copies of the Presiding Officer's recommendations shall be provided to any interested person on request, without charge. Copies of the record will be provided in accordance with 40 CFR part 2.

(g) *Determination of the Administrator or Regional Administrator*. Upon receipt of the Presiding Officer's recommendations or, where no hearing has been held, upon termination of the thirty (30)-day period for requesting a hearing provided in paragraph (a) of this section, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to the modification, revocation or suspension of the permit. Such determination shall include a description of the permit revision, revocation or limitation, the basis therefor, and the effective date. A copy of such determination shall be mailed to the permittee and each person who registered his attendance at the hearing by providing his name and mailing address.

[42 FR 60702, Nov. 28, 1977, as amended at 57 FR 5346, Feb. 13, 1992]

§ 223.5 Request for, scheduling and conduct of adjudicatory hearing; determination.

Within ten (10) days following the receipt of the Administrator's or Regional Administrator's determination issued pursuant to § 223.4(g), any person who participated in the public hearing held pursuant to § 223.4 may request that an adjudicatory hearing be held for the purpose of reviewing such determination or any part thereof. Such request shall be submitted and disposed of, and any adjudicatory hearing convened shall be conducted in accordance with the procedures set forth in §§ 222.10 (a), (b), (d), and (e) and 222.11.

PART 224—RECORDS AND REPORTS REQUIRED OF OCEAN DUMPING PERMITTEES UNDER SECTION 102 OF THE ACT

Sec.

224.1 Records of permittees.
224.2 Reports.

AUTHORITY: 33 U.S.C. 1412 and 1418.

§ 224.1 Records of permittees.

Each permittee named in a special, interim, emergency or research permit under section 102 of the Act and each person availing himself of the privilege conferred by a general permit, shall maintain complete records of the following information, which will be available for inspection by the Administrator, Regional Administrator, the Commandant of the U.S. Coast Guard, or their respective designees:

(a) The physical and chemical characteristics of the material dumped pursuant to the permit;

(b) The precise times and locations of dumping;

(c) Any other information required as a condition of a permit by the Administrator or the Regional Administrator, as the case may be.

[42 FR 2474, Jan. 11, 1977]

§ 224.2 Reports.

(a) *Periodic reports*. Information required to be recorded pursuant to § 224.1 shall be reported to the Administrator or the Regional Administrator, as the case may be, for the periods indicated within 30 days of the expiration of such periods:

(1) For each six-month period, if any, following the effective date of the permit;

(2) For any other period of less than six months ending on the expiration date of the permit; and

(3) As otherwise required in the conditions of the permit.

(b) *Reports of emergency dumping*. If material is dumped without a permit pursuant to paragraph (c)(4) of § 220.1, the owner or operator of the vessel or aircraft from which such dumping occurs shall as soon as feasible inform the Administrator, Regional Administrator, or the nearest Coast Guard district of the incident by radio, telephone, or telegraph and shall within 10 days file a written report with the Administrator or Regional Administrator containing the information required under § 224.1 and a complete description of the circumstances under which the dumping occurred. Such description shall explain how human life at sea was in danger and how the emergency dumping reduced that danger. If the material dumped included containers, the vessel owner or operator shall immediately request the U.S. Coast Guard to publish in the local Notice to Mariners the dumping location, the type of containers, and whether the contents are toxic or explosive. Notification shall also be given to the Food