

occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(p) *Operational flexibility.* A permitted facility may make changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the facility provides the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days. The source and the permitting authority shall attach each such notice to their copy of the relevant permit.

(1) *Trading under permitted emissions cap.* The permitting authority shall include in a permit an emissions cap, pursuant to a request submitted by the applicant, consistent with any specific emission limits or restrictions otherwise required in the permit by any applicable requirements, and permit terms and conditions for emissions trading solely for the purposes of complying with that cap, provided that the permitting authority finds that the request contains adequate terms and conditions, including all terms required under § 71.6, to determine compliance with the cap and with any emissions trading provisions. The permit shall also contain terms and conditions to assure compliance with all applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to it are quantifiable and enforceable. Any permit terms and conditions establishing such a cap or allowing such trading may be established or changed only in a full permit issuance, renewal, or significant permit revision procedures. The permitting authority shall not be required to include in the cap or emissions trading provisions any emissions unit where the permitting authority determines that the emissions are not quantifiable or where it determines that there are no replicable procedures or practical means to enforce the emissions trades.

(i) Under this paragraph (p)(1) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions

will comply with the terms and conditions of the permit.

(ii) The permit shield described in § 71.6(n) may extend to terms and conditions that allow such increases and decreases in emissions.

(2) *Trading under the implementation plan.* Permitted sources may trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in paragraph (p) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading provided the permit identifies which permit terms may be replaced with the emission trading provisions in the implementation plan.

(i) Under paragraph (p)(2) of this section, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(ii) The permit shield described in § 71.6(n) shall not extend to any change made under paragraph (p) of this section. Compliance with the permit terms that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(q) The permitting authority may allow permittees, without first applying for a permit revision, to make changes that do not result in the source being in violation of any permit term or condition but render the source subject to an applicable requirement to which the source was not previously subject, provided the requirements of paragraphs (q)(1) through (8) of this section are met.

(1) Each change shall:

(i) Meet all applicable requirements and shall not violate or result in the violation of any existing permit term or condition; and

(ii) Not result in a net increase in the allowable emissions of any regulated pollutant at the source.

(2) The change may not be subject to the requirements of title IV of the Act.

(3) Sources must provide contemporaneous written notice to the permitting authority of each such change. Such written notice shall describe each such change, the date of the change, any change in emissions, pollutants emitted, and the applicable requirement to which the source becomes subject as a result of the change.

(4) The change shall not be eligible for the permit shield under § 71.6(n) until such time as a permit shield may be granted in a subsequent permit revision consistent with the provisions of §§ 71.7(g) or 71.11.

(5) The permittee shall keep a record describing changes made under this paragraph (q).

(6) The permittee shall apply for a permit revision by the deadline set forth in § 71.5(b)(2), except that if the deadline would occur after the date on which a renewal application is due, the permitting authority may allow the permittee to incorporate the permit revision request in its renewal application.

(7) The permit shall be revised under the relevant procedures of § 71.7(e), (f), (g), or § 71.11 for which the change is eligible, except that, notwithstanding provisions in those sections, if the change is subsequently processed under minor permit revision or significant permit revision procedures, and the permitting authority or EPA (in the case of a program delegated pursuant to § 71.10) determines that the change was ineligible under this paragraph (q), then the source shall be liable from the date the change was made for failure to have applied for a permit revision before the change was made as required under § 71.7.

(8) If eligible for the minor permit revision procedures of § 71.7(g), the following provisions shall apply to changes made under this paragraph (q):

(i) The public notice required under § 71.7(g)(3)(ii) shall state that if no germane and non-frivolous objection is received within 21 days of application, the permitting authority may consider that the change was eligible for processing under this paragraph (q) without further opportunity for public objection. In addition to the provisions of § 71.7(g)(3)(ii) a germane objection is one that objects to the change on the grounds that the source was ineligible under this paragraph (q).