
40 C.F.R. § 403.13

Variances from categorical pretreatment standards for fundamentally different factors.

- (a) *Definition.* The term *Requester* means an Industrial User or a POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.
- (b) *Purpose and scope.* In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these Pretreatment Standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.
- (c) *Criteria*—(1) *General criteria.* A request for a variance based upon fundamentally different factors shall be approved only if:
- (i) There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and
 - (ii) Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and
 - (iii) The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.
- (2) *Criteria applicable to less stringent limits.* A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:
- (i) The alternative limit requested is no less stringent than justified by the fundamental difference;
 - (ii) The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under § 403.5;
 - (iii) The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment

Standards; and

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)