amend their systems to correspond to
the definition of industrial users in
§35.905 or to provide for systemwide in-
dustrial cost recovery under §35.928–
1(g).

§ 35.928–1 Approval of the industrial
cost recovery system.

The Regional Administrator may ap-
prove an industrial cost recovery sys-

tem if it meets the following require-
ments:

(a) General. Each industrial user of
the treatment works shall pay an an-
nual amount equal to its share of the
total amount of the step 1, 2, and 3
grants and any grant amendments
awarded under this subpart, divided by
the number of years in the recovery pe-
riod. An industrial user’s share shall be
based on factors which significantly in-
fluence the cost of the treatment
works. Volume of flow shall be a factor
in determining an industrial user’s
share in all industrial cost recovery
systems; other factors shall include
strength, volume, and delivery flow
rate characteristics, if necessary, to in-
sure that all industrial users of the
treatment works pay a proportionate
distribution of the grant assistance al-
locable to industrial use.

(b) Industrial cost recovery period. The
industrial cost recovery period shall be
equal to 30 years or to the useful life of
the treatment works, whichever is less.

(c) Frequency of payment. Except as
provided in §35.928–3, each industrial
user shall be made not later than 1 year after the user begins use of the
treatment works.

(d) Reserve capacity. If an industrial
user enters into an agreement with the
grantee to reserve a certain capacity in
the treatment works, the user’s indus-
trial cost recovery payments shall be
based on the total reserved capacity in
relation to the design capacity of the
treatment works. If the discharge of an
industrial user exceeds the reserved ca-
pacity in volume, strength or delivery
flow rate characteristics, the user’s in-
dustrial cost recovery payment shall be
increased to reflect the actual use. If
there is no reserve capacity agreement
between the industrial user and the
grantee, and a substantial change in
the strength, volume, or delivery flow
rate characteristics of an industrial
user’s discharge share occurs, the
user’s share shall be adjusted propor-
tionately.

(e) Upgrading and expansion. (1) If the
treatment works are upgraded, each
existing industrial user’s share shall be
adjusted proportionately.

(2) If the treatment works are ex-
panded, each industrial user’s share
shall be adjusted proportionately, ex-
cept that a user with reserved capacity
under paragraph (d) of this section
shall incur no additional industrial
cost recovery charges unless the user’s
actual use exceeded its reserved capac-
ity.

(f) [Reserved]

(g) Collection of industrial cost recovery
payments. Industrial cost recovery pay-
ments may be collected on a system-
wide or on a project-by-project basis.
The total amount collected from all in-
dustrial users on a systemwide basis
shall equal the sum of the amounts
which would be collected on a project-
by-project basis.

(h) Adoption of system. One or more
municipal legislative enactments or
other appropriate authority must in-
corporate the industrial cost recovery
system. If the project is a regional
treatment works accepting wastew-
ters from other municipalities, the
subscribers receiving waste treatment
services from the grantee shall adopt
industrial cost recovery systems in ac-
cordance with section 204(b)(1)(B) of
the Act with §§35.928 through 35.928–4.
These industrial cost recovery systems
shall also be incorporated in appro-
priate municipal legislative enact-
ments or other appropriate authority
of all municipalities contributing
wastes to the treatment works. The
public shall be consulted prior to adop-
tion of the industrial cost recovery sys-
tem, in accordance with 40 CFR part 25.

(1) Inconsistent agreements. The grant-
ees may have pre-existing agreements
which address (1) the reservation of ca-
pacity in the grantee’s treatment
works or (2) the charges to be collected
by the grantee in providing waste
water treatment services or reserving
capacity. The industrial cost recovery
system shall take precedence over any
terms or conditions of agreements or
contracts between the grantee and industrial users which are inconsistent with the requirements of section 204(b)(1)(B) of the Act and these industrial cost recovery regulations.


§ 35.928–2 Use of industrial cost recovery payments.

(a) The grantee shall use industrial cost recovery payments received from industrial users as follows:

(1) The grantee shall return 50 percent of the amounts received from industrial users, together with any interest earned, to the U.S. Treasury annually.

(2) The grantee shall retain 50 percent of the amount recovered from industrial users.

(i) A portion of the amounts which the grantee retains may be used to pay the incremental costs of administration of the industrial cost recovery system. The incremental costs of administration are those costs remaining after deducting all costs reasonably attributable to the administration of the user charge system. The incremental costs shall be segregated from all other administrative costs of the grantee.

(ii) A minimum of 80 percent of the amounts the grantee retains after paying the incremental costs of administration, together with any interest earned, shall be used for the allowable costs (see §35.940) of any expansion, upgrading or reconstruction of treatment works necessary to meet the requirements of the Act. The grantee shall obtain the written approval of the Regional Administrator before the commitment of the amounts retained for expansion, upgrading, or reconstruction.

(iii) The remainder of the amounts retained by the grantee may be used as the grantee sees fit, except that they may not be used for construction of industrial pretreatment facilities or rebates to industrial users for costs incurred in complying with user charge or industrial cost recovery requirements.

(b) Pending the use of industrial cost recovery payments, as described in paragraph (a) of this section, the grantee shall:

(1) Invest the amounts received in obligations of the U.S. Government or in obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof or

(2) Deposit the amounts received in accounts fully collateralized by obligations of the U.S. Government or any agency thereof.

§ 35.928–3 Implementation of the industrial cost recovery system.

(a) When a grantee’s industrial cost recovery system is approved, implementation of the approved system shall become a condition of the grant.

(b) The grantee shall maintain all records that are necessary to document compliance with these regulations.

§ 35.928–4 Moratorium on industrial cost recovery payments.

(a) EPA does not require that industrial users defined in paragraphs (a) and (b) of the definition in §35.905 pay industrial cost recovery for charges incurred during the period after December 31, 1977, and before July 1, 1979. Any industrial cost recovery charges incurred for accounting periods or portions of periods ending before January 1, 1978, shall be paid by industrial users. These funds are to be used as described in §35.928–2.

(b) Grantees may either defer industrial cost recovery payments, or require industrial users as defined in paragraphs (a) and (b) of the definition in §35.905 to pay industrial cost recovery payments for the period after December 31, 1977, and before July 1, 1979. If grantees require payment, the amount held by the municipality for eventual return to the U.S. Treasury under §35.928–2(a)(1) shall be invested as required under §35.928–2(b) until EPA advises how such sums shall be distributed. Grantees shall implement or continue operating approved industrial cost recovery systems and maintain their activities of monitoring flows, calculating payments due, and submitting bills to industrial users informing them of their current or deferred obligation.

(c) Industrial users as defined in paragraphs (a) and (b) of the definition