

information on the attainability of the proposed Federal uses for the water bodies subject to that proposal. EPA also encouraged the State to continue evaluating the appropriate use designations for these waters and to revise its water quality standards, as appropriate. On March 26, 2001, EPA and the State of Kansas entered into a Memorandum of Understanding (MOU) establishing a schedule to resolve the outstanding disapproved portions of the 1994 Kansas Surface Water Quality Standards. The MOU included a schedule by which the State would conduct use attainability analyses for each of the 1,456 waters contained in EPA's July 2000 proposal. Consistent with the MOU, the State has submitted UAAs for many of the waters identified in EPA's proposed rule.

EPA has evaluated the data and information it received from commenters and the State since the July 2000 proposal. Three categories describe the data and information EPA used to determine the scope of today's final rule:

(1) Kansas' December 10, 2002, submission of new or revised use designations, including UAAs for 225 waters;

(2) 298 use attainability analyses provided by KDHE to EPA on April 11, 2003; and

(3) Information regarding specific waters provided in comments on EPA's July 2000 proposal and additional information collected by EPA for these waters.

In evaluating the information provided to EPA prior to the date of this final regulation, EPA considered whether the data and information sufficiently demonstrated that primary contact recreation is not attainable consistent with the Federal regulations at 40 CFR 131.10(g). For information it received from the State and the public, EPA used the State's protocol for conducting recreation UAAs. EPA had previously reviewed the State's recreation UAA protocol, which is contained in the State's UAA Guidance, and believes that UAAs conducted using the protocol will likely be consistent with Federal regulations.

As a result of this evaluation, 167 waters included in EPA's July 2000 proposal are not included in today's final rule. These waters fall into one of three categories:

(1) Waters where the State has adopted and EPA has approved new or revised recreation use designations in its water quality standards (these include waters designated by the State for primary contact recreation or for

secondary contact recreation uses supported by a UAA);

(2) Waters where the State has provided information supporting the State's previously disapproved 1994 recreation use designations; and

(3) Waters where the State has provided information demonstrating that the water body does not exist.

In addition, EPA identified three stream segments originally included in its July 2000 proposal that had been combined with other stream segments and therefore do not need to be listed separately. The State submitted these administrative changes to EPA on August 10, 1999, which EPA approved on January 19, 2000. EPA inadvertently included these three stream segments as separate listings in its July 2000 proposed rule. Today's rule, however, reflects these changes and is consistent with the State's 2002 *Surface Water Register*. A list of these waters may be found in the document entitled *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

The remaining 1,286 waters are included in today's final rule; EPA is promulgating either primary or secondary contact recreation use designations for each of these waters. Four categories describe these waters. Secondary contact recreation uses are designated in today's rule for waters contained in the first category. Primary contact recreation uses are designated for the waters contained in the remaining three categories.

(1) Waters where the State has not yet designated secondary contact recreation in the *Surface Water Register*, but either the State or EPA has performed UAAs consistent with 40 CFR 131.10(g) demonstrating that secondary contact recreation is the appropriate use;

(2) Waters where the State has not yet designated primary contact recreation in the *Surface Water Register*, but either the State or EPA has collected data and information indicating that the primary contact recreation use is attainable;

(3) Waters where the State's analysis does not support the recreation use adopted in the State's *Surface Water Register*; and

(4) Waters where EPA has not received any information or where the information received is insufficient to conclude that primary contact recreation is not attainable.

EPA's detailed analysis of the information submitted by the State of Kansas, by commenters on the proposed rule, and information collected by EPA is presented below.

1. Kansas' December 10, 2002, Submission of Water Quality Standards

On December 10, 2002, KDHE provided EPA with 225 UAAs along with revised water quality standards. For the majority of these waters, the State revised its *Surface Water Register* to reflect the water bodies' new primary contact recreation use designations, secondary contact recreation use designations, or the removal of recreation use designations. EPA reviewed the State's UAAs for consistency with the Federal regulations and collected additional data for 16 waters where the State's UAAs were inconsistent with EPA's regulations and the State's UAA protocol. As a result of this review, on June 24, 2003, EPA withdrew its 1998 disapproval with respect to 161 of these waters and approved the State's use designation decisions for these waters. This approval decision removed the need for Federal promulgation of use designations for these waters. Therefore, EPA is not including these 161 waters in today's rule. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

In addition to the 161 waters for which EPA approved the State's use designation decisions, there are 43 other waters for which the State's UAAs (and information collected by EPA for two of these waters) successfully demonstrate that the primary contact recreation use is not an attainable use and that the appropriate use for these waters is secondary contact recreation. However, Kansas has not yet changed its *Surface Water Register* to designate any recreational uses for these waters. Therefore, EPA is promulgating secondary contact recreation for these 43 water bodies.

For another 16 waters, analyses conducted by the State indicate that primary contact recreation is attainable based on an evaluation of a variety of factors, including activities occurring there, water quality, flow, and depth. The State's UAAs recommended the waters for primary contact recreation, but Kansas has not yet adopted these recreation uses into the *Register*. Pursuant to EPA's regulations, the information in the UAA indicates that primary contact recreation is the appropriate use. For these 16 waters, EPA is promulgating primary contact recreation use designations. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the