

administrative record accompanying this final rule.

EPA reviewed the analyses provided by the State to assure consistency with the Clean Water Act and the implementing Federal regulations. For five of these waters, EPA found that the State's analyses were insufficient either to support the recreation uses contained in the State's 2002 *Surface Water Register* or to demonstrate that primary contact recreation is unattainable. Therefore, EPA is promulgating primary contact recreation for these five water bodies. 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 summary, today's rule contains use designations for 64 waters for which the State prepared UAAs in connection with its December 2002 submission but has not yet made use designation changes in its *Surface Water Register*. Once the State adopts and EPA approves use designations for specific waters, EPA will initiate withdrawal of its corresponding Federal use designations for those water bodies.

## 2. Use Attainability Analysis Information Provided by the State of Kansas to EPA on April 11, 2003

On April 11, 2003, the State provided to EPA an additional 298 UAAs that the State conducted during 2002 as part of its scheduled review of all classified waters under State law and the State's Memorandum of Understanding with EPA. EPA reviewed the information contained in the State's UAAs and collected additional data for eight of these waters. As a result of this review, EPA found that, for four waters, the State's UAAs support the State's original 1994 recreation use designations. Consequently, on June 24, 2003, EPA withdrew its 1998 disapproval with respect to these four waters and approved the State's designated uses for these waters. This action removes the need for Federal promulgation of designated uses for these waters. Therefore, EPA is not including these waters in today's final 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.

For two other waters, Mulberry City Lake and Frazier Lake, the State's analyses demonstrate that these water bodies do not exist; therefore, EPA is removing these two waters from the scope of this rulemaking. Information provided by the State indicates that Mulberry City Lake is not a known

water body in Kansas. It had erroneously been included in the State's 1994 *Surface Water Register* and as part of EPA's 1998 disapproval and July 2000 proposal. The State included Frazier Lake in its 1994 *Surface Water Register*, even though at the time it did not have the characteristics of a lake, because it understood that a lake bearing that name would be created by impounding a stream. In 2003, the State provided information indicating that the project was abandoned. Therefore, Frazier Lake was never created. Based on this new information, EPA is not including these water bodies in today's final rule.

For the remaining 292 waters, based on the information contained in the remaining UAAs conducted by Kansas and the additional information collected by EPA, EPA determined, consistent with 40 CFR 131.10, that a primary contact recreation use designation is appropriate for 143 waters and a secondary contact recreation use designation is appropriate for 149 waters. The State has not yet revised its *Surface Water Register* to codify these primary and secondary contact recreation use designations for any of these waters. Therefore, EPA is today promulgating either primary contact recreation use or secondary contact recreation use designations for these waters consistent with the State's and EPA's analyses. 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 its July 2000 proposal, EPA proposed to designate Mined Land Lakes for primary contact recreation. Information in the UAAs provided by the State in April 2003 indicates that 43 individual lakes comprise Mined Land Lakes. (EPA identified these lakes as two separate entries in its July 2000 proposal because EPA had no basis—other than two different hydrologic unit codes—to distinguish among them.) The State conducted UAAs for all 43 lakes that indicate primary contact recreation is the appropriate designated use for all of these water bodies. For simplicity and due to the fact that the information EPA received from the State indicates that all the lakes comprising Mined Land Lakes are capable of supporting primary contact recreation, today's final rule continues to list Mined Land Lakes as two entries in its regulation.

Once the State adopts and EPA approves use designations for these 292 waters, EPA will initiate withdrawal of its corresponding Federal use designations for these waters.

## 3. Information Submitted by Commenters in Response to EPA's July 2000 Proposal and Information Collected by EPA

At the time of its July 2000 proposal, EPA solicited public comment and information on the attainability of the proposed Federal uses for the water bodies subject to that proposal. Prior to today's final action, EPA considered the information provided to EPA during the public comment period for the July 2000 proposed rule and information since collected by EPA. Some of the information submitted to EPA indicated that primary contact recreation uses may not be attainable for particular water bodies and that, therefore, the "presumption" of primary contact recreation was potentially rebutted. In reviewing public comments to determine whether the presumption had been rebutted for a particular water body, EPA considered a number of factors, including (1) whether the comment identified a specific water body or provided reasonably specific locational information for EPA to use to identify the water body discussed in the comment; (2) whether the comment stated or clearly implied that because of the depth or flow level of the water, the water body was not capable of supporting primary contact recreation during any part of the recreation season (April through October under Kansas law); and (3) whether the comment claimed that the water should not be designated for primary contact recreation.

For 93 water bodies, EPA determined that the information provided by commenters potentially rebutted the presumption of primary contact recreation. For these waters, EPA collected additional information consistent with the requirements of 40 CFR 131.10(g) to determine the appropriate recreational use of the water body. If Kansas had not yet completed an acceptable use attainability analysis for a particular water body, EPA—using Kansas' expedited recreational use attainability analysis protocol in coordination with the State—performed a use attainability analysis. As a result, EPA collected additional information for 93 waters. Based on this information, EPA determined, consistent with 40 CFR 131.10, that a primary contact recreation use designation is appropriate for 53 waters and a secondary contact recreation use designation is appropriate for 38 waters. The State has not yet adopted these use designations for any of these waters. Therefore, EPA is today promulgating primary contact recreation use