

of the costs for this rule may result from the need for minor dischargers to install disinfection systems.

**TABLE 3.—TOTAL ESTIMATED
POTENTIAL STATEWIDE COSTS**
[2002 \$/yr]

Provision	Estimated annual cost
Facilities Discharging to Waters Lacking Primary Contact Recreation Designated Use ..	1,800,000
Facilities Discharging to Waters Lacking Aquatic Life Designated Use	0
Total	1,800,000

F. Significant Comments on the Economic Analysis for the Proposed Rule

In comments submitted on the proposed rule, KDHE provided detailed inventories of facilities affected by each provision of the proposed rule. In comparison, EPA's estimates of affected facilities used to analyze costs for the proposed rule were incomplete, because of missing data. Therefore, because the State of Kansas should have the best information on the location of its facilities, EPA based its analysis of the final rule on KDHE's inventories.

To estimate potential compliance costs, EPA generally followed the approach used by KDHE in a cost impact analysis submitted as part of its comments on the proposed rule. EPA considered the same general categories of facilities; however, EPA's methodology differed in a number of key details.

For each of the 133 mechanical treatment plants and aerated lagoons, KDHE performed a facility-by-facility assessment of the treatment technologies that the facilities might need to install because of this rule based on data regarding existing treatment processes and effluent concentrations. KDHE concluded that 65 facilities would probably need to install treatment for fecal coliforms. However, the KDHE cost impact analysis did not include the facility-specific data on which these assessments were based. Therefore, EPA used existing data available from PCS to examine KDHE's conclusions. PCS data for fecal coliform, available for five facilities in the potentially affected universe, indicated that four of these facilities would probably need to install additional treatment. Because PCS data were consistent with KDHE's conclusions for each facility, EPA accepted KDHE's conclusions regarding which facilities

would need additional treatment, except the one for which PCS data showed otherwise. KDHE concluded that about half of the affected facilities would only need to expand their existing disinfection process and would not need UV disinfection. However, since EPA did not know the specific disinfection processes currently in operation at the facilities, EPA conservatively assumed that all facilities would need to install UV disinfection.

For conventional lagoons, KDHE provided two years of effluent sampling data for 20 sample facilities. EPA examined the sampling data for the 20 sample facilities and determined that only 8 of the facilities (40% of sample) would need to install additional treatment for fecal coliforms. EPA assumed that each facility would pursue the lowest cost option available (*i.e.*, addition of UV disinfection). EPA then extrapolated costs, based on the percentage of sample facilities (40%) needing additional treatment, to the universe of potentially affected lagoons, and concluded that a total of 113 facilities would probably need to install additional treatment for fecal coliforms. To provide a conservative estimate of costs, EPA assumed that the lagoons needing treatment would be the largest facilities that EPA identified among the facilities potentially affected by provisions of the proposed rule.

However, just prior to EPA's promulgation of this final rule, KDHE provided EPA with an updated inventory reducing the number of potentially affected facilities from 416 to 183 facilities reflecting the narrowed scope of this final rule relative to EPA's July 2000 proposal. Thus, EPA's economic analysis likely overstates the economic impact of this rule.

For a response to the other comments EPA received on its economic analysis of the proposed rule, see the Response to Comments document contained in the administrative record to this rulemaking.

VI. Alternative Regulatory Approaches and Implementation Mechanisms

Data and information may become available after the date of this rulemaking that will be material to water quality standards for Kansas. There are several mechanisms available to ensure that the water quality standards and their implementing mechanisms appropriately take into account such new information. These mechanisms are described in VI. A., B., C., and D.

It is important to remember that two of these mechanisms, designated use changes and site-specific criteria, are

modifications to the State's water quality standards. Federal regulations at 40 CFR 122.44(d)(1) require that NPDES permits include limitations necessary to achieve water quality standards adopted under section 303 of the CWA.

Therefore, a designated use revised by the State or a site-specific criterion cannot be the basis for NPDES permit limitations until the State has adopted it as part of its water quality standards, has submitted it to EPA, and EPA has approved it. See 40 CFR 131.21(c) & (d). EPA would also need to withdraw any corresponding Federal use designation. As with any other State revision to its water quality standards, EPA will then review these revisions to determine whether they are scientifically defensible in accordance with 40 CFR 131.11(b)(1)(iii), or meet the requirements of 40 CFR 131.10(g), as applicable. EPA will also consider whether the appropriate procedural requirements have been met, such as public participation and certification by the appropriate legal authority within the State. Therefore, Kansas will not be able to employ its designated use changes and site-specific criteria as a basis for NPDES permit limits until Kansas submits and EPA approves them. As noted in EPA's regulations, State water quality standards do not become effective for Clean Water Act purposes until they are approved by EPA. See 40 CFR 131.21. In addition, EPA would also need to withdraw any corresponding Federal use designations.

While 40 CFR 131.13 allows States to adopt variances for State-adopted water quality standards, such variances may not be used for Federally promulgated water quality standards. Consequently, EPA has included in today's rule a Federal variance provision allowing the Region 7 Regional Administrator to grant water quality standards variances where a permittee submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This process is discussed in greater detail in section VI.C. below.

A. Designating Uses

As described throughout this preamble, States have considerable discretion in designating uses. EPA expects that as the State conducts its planned UAAs, it may find that changes in use designations are warranted for some of these water bodies. If Kansas adopts and submits to EPA new use designations for waters bodies subject to today's rule and if EPA approves the State's use designations, EPA will initiate withdrawal of the corresponding use designations promulgated today.