

rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky’s program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

## II. Submission of the Proposed Amendment

By letter dated June 25, 2002 (administrative record no. KY-1544), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to our request for additional information in a letter dated February 23, 2001 (administrative record no. KY-1503). In that letter, we asked Kentucky to clarify that its sedimentation pond performance standards also apply to other treatment facilities. This issue was originally presented to Kentucky in an issue letter dated May 26, 2000 (administrative record no. KY-1479). Kentucky’s response on August 10, 2000 (administrative record no. KY-1489) did not fully satisfy our concerns.

In this submission, Kentucky responded by adding a new Section (6) to its sedimentation pond regulations at 405 KAR 16:090 and 18:090 to establish performance standards for “other treatment facilities.”

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on September 16, 2002.

By letter dated October 30, 2002, (administrative record no. KY-1568) Kentucky submitted revisions to its original submittal at sections 1, 4, 5 and 6. Because the revisions were comprised of references and did not change the substance or meaning of the regulations, we did not re-open the comment period.

The chronology of events that preceded this notice follow. By letter dated July 30, 1997 (administrative record no. KY-1410), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises 405 KAR at

sections 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:120.

We announced receipt of the proposed amendment in the September 5, 1997, **Federal Register** (62 FR 46933), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 6, 1997. On November 14, 1997, a Statement of Consideration of public comments was filed with the Kentucky Legislative Research Committee. As a result of the comments and by letter dated March 4, 1998, Kentucky made changes to the original submission (administrative record no. KY-1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated March 16, 1998, Kentucky made additional changes to the original submission (administrative record no. KY-1423). The revisions were made at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. By letter dated July 14, 1998, Kentucky submitted a revised version of the proposed amendments (administrative record no. KY-1431). All the revisions, except for a portion of those submitted March 16, 1998, were announced in the August 26, 1998, **Federal Register** (63 FR 45430).

During our review of the amendment, we identified concerns relating to the provisions at 405 KAR 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. We notified Kentucky of the concerns by letter dated May 26, 2000 (administrative record no. KY-1479). Kentucky responded in a letter dated August 10, 2000, and submitted additional explanatory information (administrative record no. KY-1489). The explanatory information and those revisions not included in previous notices were announced in the June 5, 2002, **Federal Register** (67 FR 38621).

In this rule, we will address only those revisions at 405 KAR 16:18:090 sections 1, 4, 5, and at new section 6. We addressed Kentucky’s revisions to its subsidence control regulations at 405 KAR 18:210 in a **Federal Register** notice (KY-229) published on May 7, 2002 (67 FR 30549). We will address the remaining revisions to the Kentucky regulations in future **Federal Register** notices (KY-216 and KY-228).

## III. OSM’s Findings

Following are the findings we made concerning the amendment under

SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

At 405 KAR 16/18:090—Sedimentation Ponds, sections 1 and 5 are revised to require that sedimentation ponds comply with sections 1 through 6 of 405 KAR 16/18:090. The revision was made to incorporate a reference to the new performance standards for “other treatment facilities” at section 6 since those facilities may be used in conjunction with, or in addition, to sedimentation ponds. Sections 1, 4, and 6 also cite KRS 350.050, which is the general grant of authority and powers to Kentucky’s Natural Resources and Environmental Protection Cabinet (Cabinet). Accordingly, these added references are not inconsistent with the requirements of SMCRA and the Federal regulations.

At 405 KAR 16/18:090 new section 6, Kentucky is adding regulations for “other treatment facilities.” The definition of this term was included in Kentucky’s July 30, 1997, submission (administrative record no. KY-1410). It will be approved in the final rule notice for KY-228. In new section 6, Kentucky is permitting the use of other treatment facilities in conjunction with sedimentation ponds or in place of sedimentation ponds, if specifically approved by the Cabinet for that purpose on a case-by-case basis, pursuant to the Cabinet’s authority in KRS 350.050. Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Cabinet based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 405 KAR 16:070 (or 18:070) Section 1(1)(g) will be met. They must meet all requirements for sedimentation ponds, if the requirements can be appropriately applied to other treatment facilities. The Cabinet shall determine the applicable requirements on a case-by-case basis depending upon the type of other treatment facilities. In every case, the other treatment facilities shall be designed, constructed, and maintained to: (a) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Cabinet, pursuant to the Cabinet’s authority in KRS 350.050; (b) provide adequate sediment storage volume, as approved on a case-by-case basis by the Cabinet based upon the anticipated volume of sediment to be collected during the design precipitation event and a feasible plan for clean-out operations; (c) provide adequate detention time so that the discharges shall meet the