**Section 1702.16 Stockpiling of Minerals**

a) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

b) Other minerals.

1) The Department shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if the operator fails to maintain adequate and verifiable records of the mining area of origin or the disposition of stockpiles, or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

2) The Department may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if:

A) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

B) Except as provided in Section 1702.16(b)(3), the stockpiled other minerals do not exceed the 12-month supply of the mineral required for future sales as approved by the Department on the basis of the exemption application.

3) The Department may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in Section 1702.16(b)(2) if the operator can demonstrate to the Department's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

4) The Department may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by Sections 1702.16(b)(2) and (3) based on additional information available to the Department.