

**Ministry of Northern Development, Mines, Natural Resources and Forestry**

# **EXCLUSION OF TIME: For Performing and/or Filing Assessment Work**



Mining Lands Section

October 2021

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## **Purpose**

The main purpose of this policy is to provide direction to claim holders and decision-makers with respect to how a Recorder or the Minister will consider requests for an exclusion of time pursuant to section 67 of the Mining Act (the “Act”), which authorizes a Recorder or the Minister to grant an order excluding a period of time within which work on a mining claim must be performed or reported. The policy also describes the circumstances in which the Minister will consider issuing an order for an exclusion of time on the Minister’s own initiative.

## **Background**

Claim holders must satisfy annual required units of assessment work to keep their claims in good standing. They must perform eligible assessment (exploration) work and submit an assessment work report through the Mining Lands Administration System (MLAS). The Minister reviews the report and assigns assessment work credits as set out in the Assessment Work Regulation (O. Reg. 65/18). The assessment work credits must be applied to a mining claim on or before the claim’s “due date” to satisfy the required units of assessment work and prevent the claim from forfeiting.

Claim holders can use MLAS to apply assessment work credits from the reserve for a mining claim or allocate assessment work credits from the reserve for contiguous mining lands to satisfy the annual required units of assessment work. Under certain conditions, claim holders may make payments in place of assessment work and apply those payments to satisfy the annual required units of assessment work.

Claim holders are responsible for keeping their mining claims in good standing by satisfying the annual required units of assessment work for their mining claims, or by requesting a discretionary order for an exclusion of time. In certain circumstances, an order for an extension of time under section 73 of the Act may be requested instead, which is not covered in this policy (please refer to the Extension of Time Policy).

An order for an exclusion of time identifies a period of time where the required units of assessment work are excluded. The claim holder is relieved of the requirement to carry out assessment work for the excluded period of time. It results in a new anniversary date being set for the mining claim. This type of order is discretionary and will only be granted when claim holders have been prevented from performing or reporting assessment work due to exceptional circumstances outside of their control.

Where claim holders are applying for an exclusion of time order, the applicant must demonstrate that all available options to keep the claim in good standing have been exhausted. The claim holder should consider the following options before submitting an application:

- Is it possible to reschedule the work program or perform alternative assessment work?
- Is it possible to make a payment in place of assessment work?
- Does the claim holder have available assessment work credits in reserve that may be used to satisfy the required units of assessment work?

## Types of Exclusion of Time Orders

There are three subsections of the Act that authorize exclusion of time orders:

1. Order by the Recorder or the Ontario Land Tribunal as per subsection 67(3)
2. Order by the Minister as per subsection 67(4) and
3. Order by the Minister as per subsection 73.1(1).

Claim holders are required to apply for the first two of these types of orders. The Minister can issue the third type of order on the Minister's own initiative.

This policy applies to orders sought from the Recorder and from the Minister. For more information about obtaining an order excluding time from the Ontario Land Tribunal, please contact the Registrar, [Ontario Land Tribunal](#).

### 1. Orders by the Recorder

Under subsection 67(3) of the Act, a Recorder may make an order excluding the following periods of time:

- The time during which a permit under the *Forest Fires Prevention Act* or the *Public Lands Act* that is necessary for the beginning or carrying on of assessment work is refused;
- The time during which the performance of work is prohibited under the *Forest Fires Prevention Act*, the *Public Lands Act* or any other Act; and
- The time during which the holder defers the start of assessment work under this Act or is delayed in performing it at the Crown's request or by the Crown's actions.

Delays in carrying out assessment work due to the Crown's request or actions may include:

- A temporary hold that has been placed on a required exploration permit application by the Director of Exploration;
- Exploration programs impacted by Provincial environmental assessments (e.g. the Fisheries Act).

**NOTE:** situations where the claim holder has chosen to delay or defer work will not be considered for a Recorder's exclusion of time order.

The claim holder must provide satisfactory evidence of the refusal, prohibition, deferral or delay that prevented the assessment work from being performed. This evidence may include written statements, orders or other documents produced by the Ministry of Northern Development, Mines, Natural Resources and Forestry or any other relevant ministry.

The claim holder must demonstrate that an assessment work program was planned but could not be performed due to one of the circumstances noted in subsection 67(3) of the Act. The planned activity must have been directly impacted by the refusal, prohibition, deferral or delay described by the claim holder (e.g. a three-week summer restriction under the *Forest Fire Prevention Act* would not justify an exclusion of time for a project designed for winter months).

The Recorder will review the evidence and determine, in accordance with the limits in subsection 67(3) of the Act, the period of time to be excluded.

## **2. Orders by the Minister**

Under subsection 67(4) of the Act, the Minister may make an order for an exclusion of time, if the Minister is satisfied that special circumstances exist which prevented the claim holder from performing and/or reporting work on a mining claim. Claim holders must submit a request in writing that substantiates the special circumstances that prevented work from being performed and/or filed.

An application for an exclusion of time under subsection 67(4) of the Act can only be made within the 30-day period prior to the due date of the claim. In the interest of keeping land packages together, the claim holder may include contiguous claims for consideration in the request for an order excluding time (the due date of the contiguous claims will not be within 30 days of the application).

### **Special circumstances where exclusions of time may be granted include:**

- An unavoidable event that is a result of the elements of nature (e.g. tornado, flood, public health emergency, etc.);
- Illness, personal injury, medical conditions resulting in an inability to meet the assessment work requirements;
- Exceptional situations related to Aboriginal engagement/consultation.

### **Natural Disasters and Health Concerns**

The Minister may make an order excluding a period of time if a natural disaster, illness, injury or other medical condition has prevented planned work activities from being performed. The claim holder must provide evidence that demonstrates the condition or

event that prevented the work from being performed, the duration of the condition or event, and the previously planned work program that was obstructed by the condition or event.

An illness, personal injury or medical condition must have caused a physical inability that rendered the claim holder incapable of carrying out the assessment work or making decisions about alternatives to work, payment in place of work or distributing credits from reserves. Medical and health issues will generally only be considered in the context of an unanticipated critical event. If the medical or health issues are chronic or long-standing, the claim holder may reasonably be expected to make other arrangements to complete the assessment work (e.g. hire a contractor).

### **Aboriginal Engagement/Consultation:**

The Mining Act regulates early exploration activities through an exploration plan and exploration permit system, which includes requirements for Aboriginal consultation. The Exploration Plans and Exploration Permits regulation sets out processes that represent a reasonable and appropriate way to ensure meaningful Aboriginal consultation occurs at the early exploration stage.

In most circumstances, if a claim holder has not followed the exploration plans and permits process that is required to perform certain assessment work needed to keep a claim in good standing, an exclusion of time order based on difficulties with Aboriginal consultation will not be available.

In exceptional circumstances, the Minister may make an order excluding a period of time if the claim holder has not submitted an exploration plan or an exploration permit application. The decision to make an order under these conditions will be determined by the Minister on a case by case basis in extremely rare situations where following the exploration plan and exploration permit process would have serious negative repercussions: for example, if it is reasonably likely that the submission of an exploration plan or an exploration permit application at that time could cause irrevocable harm to the relationship between the claim holder and an Aboriginal community, jeopardizing the immediate or long-term feasibility of a project on a claim.

### **Supporting an Exclusion Request**

A claim holder seeking an exclusion of time must be prepared to support the request. An application for an exclusion of time must describe:

- What circumstances have prevented the claim holder from meeting the assessment work requirements by the due date? When did these circumstances arise and what steps were taken to meet the requirements despite these circumstances? Were the circumstances beyond the control of the claim holder?

- What efforts have been made towards satisfying the assessment work requirements by the claim's due date?
- What efforts has the claim holder made to ensure the assessment work will be completed, reported and applied to the claim if an exclusion of time is granted?
- What assurance can the claim holder provide that demonstrates the claim will be kept in good standing, if the exclusion of time is granted?

## **Reasonable Efforts to Meet Assessment Work Requirements**

The Minister will consider supporting documents and other evidence submitted to demonstrate that the claim holder has made good faith efforts to complete the assessment work required to satisfy the annual units of assessment work.

Evidence that may be considered by the Minister includes:

- Work plans outlining details of exploration work/activities.
- Schedules for completion of activities and assessment work report submission.
- Proof that work has been completed and the assessment work report is underway.
- An exploration plan in effect or an issued exploration permit.
- Proposed efforts to advance towards the discovery of economic mineral deposits and/or development of minerals
- Signed contracts with persons hired to perform the assessment work.

## **Status of Mining Claim Pending the Review of an Application for Exclusion of Time**

During the period that a request for a Minister's exclusion of time is under consideration, subsection 67(6) of the Act provides that the claim holder's interest in the mining claim does not cease and the claim does not forfeit under section 72 of the Act. Where the Minister does not order an exclusion of time, and the decision is made after the anniversary date of the claim, the claim holder's interest in the claim will cease and the claim will forfeit pursuant to section 72 of the Act, effective as of the anniversary date.

## **Circumstances that do not Support the issuance of an Exclusion of Time Order**

The following circumstances **do not** support the issuance of an exclusion of time order:

- The claim holder has not exercised due diligence and has not made good faith efforts to perform assessment work or satisfy the annual units of assessment

work for a mining claim through an alternative process (e.g. making a payment in place or applying reserved assessment work credits).

- The required assessment work has not been completed due to a claim holder's lack of financing or financial resources for undertaking assessment work.
- The inability to complete the required assessment work (or use an alternative process to keep a mining claim in good standing) is due to the actions or inactions, or the failure to do something that is required, by the claim holder.

## Submitting an Application

If the claim holder is applying for an exclusion of time order because a Director of Exploration has put a temporary hold on the process to obtain an exploration permit that is required to carry out assessment work on a mining claim to meet the required units of assessment work, the claim holder may apply for an order excluding time through MLAS. The application process is described in the ministry's [Claim Management Directive](#).

In all other circumstances described above, applications for an exclusion of time order from a Recorder or the Minister pursuant to subsections 67 (3) and (4) of the Act should be sent to the Provincial Recording Office, at [pro.ndm@ontario.ca](mailto:pro.ndm@ontario.ca).

### 3. Order on the Minister's initiative

Under subsection 73.1(1) of the Act, the Minister may make an order for an exclusion of time on the Minister's own initiative, if there are special circumstances that affect all mining claims, or one or more classes of mining claims.

This type of exclusion order will be issued only on rare occasions, and only where, in the Minister's view, it is not appropriate to require the affected claim holders to apply for an exclusion.

Special circumstances that could give rise to this type of order will be assessed on a case-by-case basis and could include many of the circumstances that could justify an order under s. 67(4), where the effect of the circumstances are not personal to a particular claim holder, but instead affects an identifiable class of claims. The circumstances could include:

- An unavoidable event that is the result of the elements of nature (e.g. tornado, flood, public health emergency) or another unavoidable issue that is outside the control of claim holders
- Exceptional situations involving the Crown's obligations in relation to Section 35 of the *Constitution Act, 1982*.



## Effects on Due Date and Anniversary Date

When issuing an exclusion of time order, the Minister or Recorder will set a new due date and may change the anniversary date of the claim to correspond with the new due date. Pursuant to subsection 67(2) of the Act, the anniversary date may be set to a later date up to, but not exceeding, the number of days that have been excluded.

The Recorder or Minister will not set a new due date that is more than two years from the date the order is granted.

### **Example 1**

Claim due date:	September 15, 2020
Claim anniversary date:	September 15 <sup>th</sup> of each year
Assessment year:	September 16, 2019 to September 15, 2020

The Recorder or the Minister excludes a total of 45 days from the time within which work on the mining claim must be performed and reported and sets a new anniversary date:

New claim due date:	October 30, 2020
New claim anniversary date:	October 30 <sup>th</sup> of each year
Next Assessment year:	October 31, 2019 to October 30, 2020

### Example 2

Claim due date:	May 1, 2020
Claim anniversary date:	May 1 <sup>st</sup> of each year
Assessment year:	May 2, 2019 to May 1, 2020

The Director of Exploration put a temporary hold on the process to obtain an exploration permit for the mining claim from May 1, 2019 to November 1, 2021. On November 1, 2021, the Recorder grants an order excluding the period of time the permit application was on temporary hold (2 ½ years) from the time within which work on the mining claim must be performed and reported and sets a new due date and anniversary date:

New claim due date:	November 1, 2022
New claim anniversary date:	November 1 <sup>st</sup> of each year
New assessment year:	November 2, 2021 to November 1, 2022

## Contact

For any inquiries about exclusions of time, please contact:

Ministry of Northern Development, Mines, Natural Resources and Forestry  
Mining Lands Section, Technical Services Unit  
B-3, 933 Ramsey Lake Road  
Willet Green Miller Centre  
Sudbury ON, P3E 6B5  
Toll Free Telephone: 1-888-415-9845  
Email: [pro.ndm@ontario.ca](mailto:pro.ndm@ontario.ca)

## Authority Detail

### Mining Act

#### Exclusion of Time and Work

**67(1)** A holder may, in accordance with this section, obtain an order,

- (a) Excluding a period of time in computing the time within which work on a mining claim must be performed or reported, or both, or within which application and payment for a lease may be made;
- (b) Fixing the date or dates by which the next or any prescribed unit of assessment work must be performed or reported, or both, or by which a payment in place of assessment work must be made, or by which an application and payment for lease may be made; and
- (c) Relieving the holder of a requirement to perform units of assessment work or to make payments for any period excluded. 2009, c. 21, s. 35.

#### Anniversary Date Changed

**67(2)** Where a period of time for doing something under this Act is excluded, the next anniversary date after the exclusion in respect of the mining claim involved may be a date that falls after the anniversary date that would have occurred, except for this provision, by up to the number of days that equal the number of days of the exclusion, and all subsequent anniversary dates shall be adjusted accordingly. 2009, c. 21, s. 35.”

#### Order by recorder or Tribunal

**67(3)** The recorder of the Tribunal may make an order prescribed in subsection (1) if the holder provides the recorder or Tribunal with satisfactory evidence of a refusal, prohibition, deferral or delay referred to in this section but the order may exclude only the following periods of time:

- 1) The time during which a permit under the *Forest Fires Prevention Act* of the *Public Lands Act* that is necessary for the beginning or carrying on the work under the Act is refused.
- 2) The time during which the performance of work under this Act is prohibited under the Acts referred to in paragraph 1 or any other Act.
- 3) The time during which the holder defers the start of work under this Act or is delayed in performing it at the Crown’s request or by the crown’s actions. 2009, c.21, s. 35.”

#### Minister’s order

**67 (4)** The Minister may make an order described in subsection (1) if the holder applies to the Minister within 30 days before the anniversary date and the Minister is satisfied that special circumstances exist. 2009, c. 21, s. 35.”

#### When order may be made

**67 (5)** The Minister may make an order under subsection (4) before or after the anniversary date. 2009, c. 21, s. 35

#### **Claim Holders Interest Continues**

**67 (6)** If a holder applies for an order under subsection (4) within the required time, then the holder's interest in the mining claim shall not cease and the claim shall not forfeit under section 72 unless and until the Minister decides not to make the order. 2017, c. 6, Sched. 2, s. 44

#### **Notice**

**67 (7)** If the Minister decides not to make an order under subsection (4), the Minister shall notify the claim holder in writing and, if the decision is made after the anniversary date of the mining claim, the claim holder's interest in the mining claim shall be deemed to have ceased under section 72, and the mining claim shall be deemed to have been forfeited under that section, as of the anniversary date of the mining claim. 2017, c. 6, Sched. 2, s. 44

#### **Minister's orders in special circumstances**

73.1 (1) If the Minister is satisfied that special circumstances exist, the Minister may, without an application and on the Minister's own initiative, make any of the following orders with respect to all mining claims or one or more classes of mining claims:

1. An order described in subsection 67 (1).
2. An order described in subsection 73 (1).

#### **When order may be made**

(2) The Minister may make an order under this section with respect to a mining claim before or after its anniversary date.

#### **If anniversary date changed**

(3) If the Minister makes an order described in subsection 67 (1) excluding a period of time for doing something under this Act, subsection 67 (2) applies with necessary modifications with respect to the applicable anniversary dates.

#### **If order made after anniversary date**

(4) If the Minister makes an order under this section with respect to a mining claim after its anniversary date, the claim holder's interest in the mining claim is deemed not to have ceased under section 72 and the mining claim is deemed not to be forfeit under that section.

#### **Copy of order sent to recorder**

(5) The Minister shall promptly provide a copy of an order made under this section to the recorder's office.

#### **Posting and filing copy**

- (6) On receiving a copy of the order, a recorder shall,
- (a) promptly note the order in the mining lands administration system and record the order on the abstract of the mining claims to which the order applies, and may post the order on the Internet; and
  - (b) take the steps necessary to give effect to the order.

## **Terms and Definitions**

### **Mining Act**

**“Anniversary Date”**, when referring to a mining claim means,

- (a) With respect to a mining claim that is registered in the mining claims registry under section 38, the date that occurs at annual intervals after the registration of the claim,
- (b) With respect to a mining claim that was converted from a legacy claim and deemed to be registered as a cell claim or a boundary claim under section 38.2 or converted from a boundary claim and deemed to be registered as a cell claim under section 38.3, the date that was the anniversary date of the legacy claim or the boundary claim immediately before the day of the conversion of such other date as may be determined in accordance with the regulations;
- (c) The date determined under clause (a) or (b) as adjusted under subsection 64(5) or 67(2), where applicable, or
- (d) Such other date as may be determined in accordance with the regulations.

### **Ontario Regulation 65/18: Assessment Work**

**“Due Date”**, in relation to a mining claim, means the date by which a claim holder is required to distribute assessment work credits to a mining claim for the purposes of the system of assessment work credits described in Part IV, as that date is determined under section 10