

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

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



Mining Lands Section

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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 will consider requests for an extension of time pursuant to subsection 73 (1) of the *Mining Act* (the “Act”) which authorizes a Recorder to grant an extension of time for performing assessment work or filing a work report to satisfy the annual required units of assessment work for a mining claim, in response to applications from claim holders (a “Recorder’s Order”). The policy also describes the circumstances in which the Recorder may grant an extension of time on its own initiative when the Mining Lands Administration System (“MLAS”) is down or otherwise unavailable, under s. 138(2) of the Act.

The policy also describes when the Minister will consider issuing an order for an extension of time on the Minister’s own initiative under subsection 73.1 of the Act (a “Minister’s Order”).

## **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 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 extension of time. In certain circumstances, an order for an exclusion of time under section 67 of the Act may be requested instead, which is not covered in this policy (please refer to the Exclusion of Time policy).

An extension of time extends the due date of a mining claim, granting the claim holder additional time to satisfy the annual required units of assessment work for the applicable assessment year.

## Types of Extension of Time Orders

There are three sections of the Act that authorize an extension of time order:

1. Order by the Recorder
  - a. as per subsection 138(2)
  - b. as per subsection 73(1)
2. Order by the Minister as per subsection 73.1

Only orders under 73(1) require the claim holder to apply. The other two types of order are issued on the Recorder's own initiative, or the Minister's own initiative, as applicable.

### 1. Orders by the Recorder

- a. Subsection 138(2) of the Act empowers the Recorder to grant an order for an extension of time on the Recorder's own initiative, if MLAS was down for a period of time and claim holders were prevented from accessing the system, and appropriate notice of the downtime was not given. The Ministry will verify the date and duration of time MLAS was unavailable. Note: if a claim holder was unable to access MLAS because of the user's own technical issues (no/weak internet connection, computer issues), this does not make them eligible for an Order under subsection 138(2).

The Recorder may issue an Order under subsection 138(2) before or after a claim's due date and extend the time to file work reports. The claim holder's interest in the claim(s) is deemed not to have ceased under section 72 and the mining claim(s) are deemed not to be forfeit.

Pursuant to section 8.1 of O. Reg 66/18, the Recorder **shall not** issue an order under this subsection if the Ministry provided notice through the MLAS bulletin board at least 24 hours in advance of the system downtime. The Recorder retains authority to issue an order under this subsection in circumstances where notice was provided in accordance with this section, but the downtime extended beyond the time period stated in the notice.

There is no application or fee for a Recorder's Order under this section.

- b. Subsection 73(1) of the Act empowers the Recorder to grant an extension order in response to an application from the claim holder. There are conditions that must be met in order for a Recorder's Order to be issued set out at s. 22 of O. Reg. 65/18; those conditions are set out below. If applying for a Recorder's Order, the claim holder must explain the circumstances that will prevent the assessment work requirements from being satisfied by the due date of the mining

claim. Details on the applications required for a Recorder's Order are set out below. A Recorder will consider the information in the application in deciding whether or not to grant an extension of time.

If a claim holder has applied for an extension of time within the time required under subsection 73(1) of the Act, the mining claim will not forfeit on its due date unless the Recorder decides not to grant the extension of time.

## **2. Order by the Minister**

Under subsection 73.1 of the Act, the Minister may issue an order for an extension of time, on the Minister's own initiative, if special circumstances exist that affect all mining claims, or one or more classes of mining claims, and in the Minister's view it is not appropriate to require the affected claim holders to apply for an extension.

Minister's Orders will be issued only on rare occasions. The special circumstances that could give rise to an order will be assessed on a case-by-case basis and could include the circumstances that could justify an order under s. 73(1), where the effect of the circumstances is not personal to a particular claim holder, but instead affect an identifiable class of claims.

A Minister's Order may be made before or after a mining claim's anniversary date. If an order is made after the anniversary date, the claim holder's interest is deemed to not be forfeited.

There is no application or fee associated with a Minister's Order.

### **Special circumstances where Recorder's Orders or Minister's Orders 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 involving the Crown's obligations in relation to Section 35 of the *Constitution Act, 1982*.

These special circumstances must affect the ability of a class of claim holders to file assessment work reports during an identifiable time period. The maximum duration of a Recorder's Order or Minister's Order is one year; further extensions require additional orders.

## Supporting a Request for a Recorder's Order

A claim holder applying for a Recorder's Order must be prepared to support the request. An application for an extension of time must be submitted to the Provincial Recording Office within the 30-day period before the due date of the mining claim. The complete application package must include the following:

- Completed Minister's approved application form;
- Payment of the non-refundable application fee;
- Explanation and materials to support the extension request.

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

- What circumstances will prevent 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?
- How long is the extension period being requested and how was the length of time determined?
- What efforts has the claim holder made to ensure the assessment work will be performed, reported and applied to the claim by the extended due date being requested?
- What assurance can the claim holder provide that demonstrates the claim will be kept in good standing, if the extension of time is granted?

Claim holders should be aware of the following:

- An extension of time shall not be for more than one year.
- If a mining claim receives more than one extension of time to satisfy the annual required units of assessment work for an assessment year, the aggregate of the extension periods for the assessment year shall not exceed one year (i.e. 12 months in total).
- An extension shall not be granted if there are sufficient assessment work credits in the reserve for the mining claim to satisfy the required units of assessment work. The claim holder must apply existing credits in reserves before seeking an extension of time.

Applications for extensions of time under this section, together with supporting materials, should be sent to the Provincial Recording Office, at [pro.ndm@ontario.ca](mailto:pro.ndm@ontario.ca).

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

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

Evidence that may be considered by a Recorder 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.
- Signed contracts with persons hired to perform the assessment work.

## **Status of Mining Claim Pending the Review of an Application for Recorder's Order**

During the period that a request for a Recorder's Order extension of time is under consideration, subsection 73(3) 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 Recorder decides not to order an extension of time, and the decision is made after the due 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, as of the due date of the claim.

## **Circumstances that Do Not Support the issuance of a Recorder's Order**

The following circumstances **do not** support the issuance of a Recorder's Order:

- **The extension would be used to allocate assessment work credits from other mining lands that have reached their maximum limit for allocating credits:** This is to prevent claim holders from circumventing the limitations on the allocation of assessment work credits for contiguous mining claims, leases, patents and licences of occupation. Claim holders may allocate a limited amount of assessment work credits from contiguous mining land reserves, per assessment or calendar year. An extension will not be granted to allow the assessment or calendar year for contiguous mining lands to restart so the allocation limitations for the lands will reset.

- **The claim holder did not have an exploration plan in place or an exploration permit issued in time to complete the required assessment work by the due date:** An extension will not be granted to allow for the submission of an exploration plan or an exploration permit application, or to allow the standard permit approval process to be completed (e.g. poor time management by the claim holder). However, if the exploration plan or permit application was delayed for reasons beyond the client’s control, or a permit application was put on temporary hold, an exclusion of time may be considered.
- **Financial hardship:** A Recorder will not consider a claim holder’s lack of financing for undertaking assessment work, or lack of financial resources, when reviewing an application for extension of time.
- **Payments in place:** An extension of time will not be granted to allow a claim holder to make a payment in place of assessment work for a mining claim.

## Effects on Due Date and Anniversary Date

An extension of time order sets a new due date for the current assessment year of the claim. It does not change the due date for subsequent assessment years and it does not change the claim’s anniversary date.

### Examples:

Claim anniversary date:	May 1 <sup>st</sup> of each year
Claim due date:	May 1, 2021
Assessment year:	May 2, 2020 to May 1, 2021

1. A Recorder, at the claim holder’s request, grants an extension of time for satisfying the required annual units of assessment as follows:

Claim anniversary date:	May 1 <sup>st</sup> of each year
Assessment year:	May 2, 2020 to May 1, 2021
Original due date:	May 1, 2021
Extended due date:	Aug. 1, 2021 (2020-2021 assessment year)
Next claim due date:	May 1, 2022 (2021-2022 assessment year)

2. A Recorder, at the claim holder’s request, grants an additional extension of time for satisfying the required annual units of assessment as follows:

Claim anniversary date:	May 1 <sup>st</sup> of each year
Assessment year:	May 2, 2020 to May 1, 2021



Original due date:	May 1, 2021
Extended claim due date:	Aug 1, 2021 (2020-2021 assessment year)
New extended claim due date:	Oct 1, 2021 (2020-2021 assessment year)
Next claim due date:	May 1, 2022 (2021-2022 assessment year)

## **Contact**

For any inquiries about extensions 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**

#### **Assessment work or payments**

**65 (1)** After a mining claim is registered, the claim holder shall perform or cause to be performed the annual units of assessment work required in accordance with the regulations or may, in the prescribed circumstances and to the extent permitted by regulation, make payments in place of assessment work in accordance with the regulations. 2017, c. 6, Sched. 2, s. 42 (1).

#### **Forfeiture of mining claim**

**72 (1)** Subject to subsections 67 (6) and 73 (3), all the interest of the holder of an unpatented mining claim ceases and the claim is forfeited, without any declaration, entry on a record or act on the part of the Crown, if the claim holder fails to do either of the following on or before the anniversary date of the mining claim as required by section 65:

1. Perform the prescribed assessment work or make a payment in place of the assessment work.
2. File a report of the assessment work done or any payments made in place of the work assessment. 2017, c. 6, Sched. 2, s. 47.

#### **Extension of time**

**73 (1)** A recorder may order an extension of time for performing assessment work or filing a report on such work if an application for the extension is made within 30 days of the anniversary date of the mining claim and the recorder is satisfied that the prescribed conditions for an extension are met. 2017, c. 6, Sched. 2, s. 49.

#### **Claim holder's interest continues**

**73(3)** If a claim holder applies for an order under subsection (1) 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 recorder decides not to make the order.

#### **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;
  - (b) take the steps necessary to give effect to the order.

**Time expiring on Saturday, etc.**

- 138 (1) Where the time limited for any proceeding or for the doing of anything in one of the following offices expires or falls upon a Saturday, Sunday, holiday or any other day on which the relevant office is closed, the time so limited extends to and the thing may be done on the day next following that is not a Saturday, Sunday, holiday or other day on which the relevant office is closed:
1. The Provincial Recording Office.
  2. An office of a Director of Mine Rehabilitation.
  3. An office of a Director of Exploration.
  4. An office of the Tribunal.

5. An office of the Minister or of the Deputy Minister. 2017, c. 6, Sched. 2, s. 67; 2017, c. 8, Sched. 17, s. 8 (3).

### **Time expiring when system down**

- (2) Where the time limited for doing anything that requires accessing the Ministry's mining lands administration system falls on a day on which that system is not available for any reason, a recorder may order, before or after the expiry of the time, an extension of time, subject to the regulations. 2017, c. 6, Sched. 2, s. 67.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 138 of the Act is amended by adding the following subsection:  
(See: 2020, c. 34, Sched. 8, s. 8)

Same, effect on leases

- (2.1) If a recorder grants an extension of time under subsection (2) in relation to an application to renew a lease under this Act, the lease is deemed not to expire or have expired, as the case may be, until the expiry of the extension of time. 2020, c. 34, Sched. 8, s. 8.

### **Extension of time, assessment work**

- (3) If a recorder grants an extension of time with respect to a deadline for submitting a report of assessment work or making payments in place of assessment work for a mining claim after the anniversary date of the mining claim, 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. 2017, c. 6, Sched. 2, s. 67. (b) take the steps necessary to give effect to the order.

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

### **Conditions for extension of time order**

**22** For the purposes of subsection 73 (1) of the Act, the following are the conditions that must be met with respect to an order extending the time for performing assessment work or filing a report on the work:

1. There must not be sufficient assessment work credits in the reserve for the mining claim to satisfy the annual units of assessment work required for the claim.
2. The extension of time must not be for a period of more than one year.

### **Limits on distribution of credits**

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The amount of assessment work credits that may be distributed from a reserve for a mining claim or for other mining lands to a mining claim at any given time is subject to the following limitations:

1. The amount of assessment work credits distributed to a mining claim shall not exceed the amount required to satisfy the annual units of assessment work required for the assessment year in which the distribution is made and the five subsequent assessment years.
2. The maximum amount of assessment work credits that may be allocated from the reserve for a mining claim to one or more contiguous mining claims in any assessment year is,
  - i. \$50,000.00, in the case of an allocation from the reserve for a boundary claim or a cell claim comprised of one or two cells,
  - ii. \$100,000.00, in the case of an allocation from the reserve for a multi-cell claim comprised on three to five cells, or
  - iii. \$150,000.00, in the case of an allocation from the reserve for a multi-cell claim comprised of six to 25 cells.
3. The maximum amount of assessment work credits that may be allocated from the reserve for mining lands other than a mining claim to one or more contiguous mining claims in any calendar year is,
  - i. \$50,000.00, in the case of mining lands that are no larger than 25 hectares,
  - ii. \$100,000.00, in the case of mining lands that are larger than 25 hectares but no larger than 100 hectares, or
  - iii. \$150,000.00, in the case of mining lands that are larger than 100 hectares.

## **Ontario Regulation 66/18: Mining Claims**

### **Time expiring when system down**

8.1 (1) For the purposes of subsection 138 (2) of the Act, a recorder shall not order an extension of time if the time limited for doing anything that requires accessing the Ministry's mining lands administration system falls on a day on which that system is not available for a period of time and all of the following circumstances apply:

The Ministry has given notice, no later than 24 hours before the period begins, that the system will be unavailable during the period and has specified the duration of the period.

The notice has been given in accordance with paragraph 1 of subsection 13.2 (1) of Ontario Regulation 45/11 (General) made under the Act. O. Reg. 35/20, s. 4.

(2) A recorder may order an extension of time if the Ministry's mining lands administration system continues to be unavailable after the end of the period in respect of which the notice was given under subsection (1) and the time limited for doing anything that requires accessing the Ministry's mining lands administration system falls during that continuing period. O. Reg. 35/20, s. 4.

(3) Subsection (2) does not apply if the circumstances set out in paragraphs 1 and 2 of subsection (1) apply in respect of the continuing period. O. Reg. 35/20, s. 4.

## **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 or 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**

**“Assessment Year”** means, with respect to a mining claim, the one-year period between the day the mining claim is registered and its first anniversary date and every subsequent periods between anniversary dates;

**“Contiguous”** means, with respect to a mining claim or other mining lands, two or more mining claims or mining lands that meet the requirements of subsections 17(4), (5) and (6);

**“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;