

BC GUIDANCE DOCUMENT

September 2024

Health, Safety and Reclamation Code for Mines in British Columbia

Health, Safety and Reclamation Code for Mines in British Columbia

Application for Variances

SAFETY FIRST

Health and Safety



Ministry of Energy, Mines and Low Carbon Innovation

Contents

Purpose of Guidance Document.....	3
Definitions.....	3
The Mines Act.....	4
Health, Safety and Reclamation Code (Code): Variance of Code Provision.....	5

Purpose of Guidance Document

This guidance outlines the process for requesting a variance from a provision of the code for a particular mine, as per Section 13 of the *Mines Act* and sections 1.2.1 to 1.2.3 of the *Health, Safety and Reclamation Code for Mines in BC*.

Definitions

The following terms are utilized in the Code:

Term	Definition
CIM	Chief Inspector of Mines
OHSC	Occupational, Health and Safety Committee

The Mines Act

Section 13 - Variance of regulations or code for individual mine

- (1) On receiving a written application from the manager, the occupational health and safety committee or the local union requesting the suspension or variance of a provision of the regulations or of the code, the chief inspector may suspend or vary the provision if the chief inspector is of the opinion that the provision does not operate in the best interest of, or is not necessary to, health and safety in an individual mine.
- (2) The chief inspector must ensure that the parties affected by the application are advised of the application for, and the subsequent decision respecting, a variance.
- (3) The chief inspector must maintain a register of all variances.
- (4) At least once every 5 years, the chief inspector
 - (a) must review each variance and advise the manager, occupational health and safety committee and local union that the chief inspector intends to review the variance, and
 - (b) after reviewing any submissions, must advise them whether or not the variance is to continue.

Guidance

This section of the *Mines Act* describes the responsibilities of the Chief Inspector of Mines (CIM) while addressing requests for a suspension or a variance of a provision of the regulations or the Code. Section 13(1) defines the CIM as having the authority to decide if a request for a suspension or a variance of a provision of the Code is appropriate.

Section 13(2) mandates the CIM to ensure that all parties affected by the request described in section 13(1) are aware of the application and the result of the process.

Section 13(3) requires the CIM to keep a record/register of all variances.

Section 13(4) describes requirements for the CIM to review each variance at least once every 5 years and communicate with the parties affected by it to ensure the continuity of the request as needed or appropriate.

Health, Safety and Reclamation Code: Variance of Code Provision

- 1.2.1 On application, the chief inspector may, by order, authorize a variance from a provision of the code for a particular mine.

Guidance

This section of the Code defines that the CIM has the authority to approve or reject a request for a variance from any provision of the Code after it is formally submitted to them.

- 1.2.2 A variance may only be made if the chief inspector has considered any comments subject to 1.2.3(3), and is satisfied that the variance
- (a) affords protection for the workers equal to or greater than the protection established by the provision being varied, or
 - (b) has substantially the same purpose and effect as the provision being varied.

Guidance

Section 1.2.2 requires the CIM to consider any comments provided by all parties involved with the mine site making the request before a decision is made.

It is critical to understand that a request for a variance must indicate that the proposed alternative to replace the described requirements of a provision of the Code is clearly regarded as "AS SAFE or SAFER" than the provision being varied. What this means is that the use of a variance as a remediation to the requirements of the Code due to the availability of easier to use, less complex, cheaper, more convenient options are not sufficient to justify its application. The concept and core reason to justify the application for a variance from a provision of the Code is to ensure that the same or higher safety levels will be achieved using the alternate option.

- 1.2.3 The manager, the OHSC, or the local union or worker representative if there is no union, at an individual mine may
- (1) submit a written request to the chief inspector for a variance of a provision of the code,
 - (2) shall, when submitting a request for a variance, provide the other two parties at the mine site with copies of the submission, and
 - (3) may within 30 days of receiving a copy of the request for a variance, submit to the chief inspector written comments on the request and provide a copy to the other two parties.

Guidance

Submission of Variance Request: Even though in most cases the request for a variance from a provision of the Code is submitted by mine management, section 1.2.3 of the Code equally provides the same rights to the mine manager, the Occupational Health and Safety Committee (OHSC), or the local union or worker representative (if no union exists) of a mine site.

- Submission** ➤ The written request must be formally made directly to the Chief Inspector of Mines (CIM). Variance requests are logged in MineSpace. Access your account to view your variance request file.
- Notification** ➤ Copies of the application must be provided to the other parties as listed above by the variance requestor.
- Feedback** ➤ The parties that are made aware of the application by receiving a copy of the request to the CIM have 30 days to provide their feedback or comments. A written response is required to be submitted to the CIM. The other parties must receive a copy of those comments.

Verification of party support: It will facilitate the processing and analysis of the request for a variance from a provision of the Code if the applicant formally includes the other party's acknowledgement, email addresses, and signatures in the cover page of their application.

The initial submission should include proof that all parties at the mine site either support the variance request or have been notified of it. If all parties agree, the Ministry will commence the review process immediately. However, if there is no indication that everyone is onboard with the variance application, the 30-day waiting period will be triggered, consequently delaying the review process.

Also intended to expedite the process, in cases where the initial submission doesn't include all parties involved, the application package should include their names and email addresses as applicable.

Example: Mine manager submits a request for a variance from a provision of the Code to the CIM without a clear indication that the OHSC and Union representatives agree with that request, the mine manager should include their names and email addresses in the application.

Submission Quality and Fullness: It is crucial that variance requests are submitted with all necessary information and documentation. Failing to provide complete and thorough submissions will result in delays in processing. To streamline the process, it is recommended that applicants provide enough information to enable the CIM to make a determination.

Examples of submissions should include:

- Administrative: Mine number, permit number, proposed start and end date, and any seasonal variations.
- Description: A summary of the request and reference to the Code section(s).
- Rationale: A detailed justification for the request, including reasons why compliance with the Code is unachievable.
- Worker Protection: A description of how the proposed request meets or exceeds the level of protection to workers and the environment as established by the Code.
- Include any other attachments relevant for consideration.

Expected time for the variance request process

The CIM review and decision on a variance request is expected to take 90 days once all necessary information has been submitted. If additional clarification or information is required to conduct the review the processing time will be increased. In addition, if requests for information are not addressed by the variance requestor within 15 days, the variance request will be considered withdrawn and will not be processed further.

Review Process: Assessment and potential follow-ups by designated Inspector

The submission is initially assessed by the CIM, who identifies the issue at hand and designates an inspector of mines with expertise in the subject to review the documents. In cases where inspectors require additional information, they will follow up directly with the mine. This may add additional time for the CIM's final decision as it may require more than one round of reviews or back and forth communication between the inspector and the mine until clarifications are made or issues are resolved.

Communication with the CIM to request a variance of the Code

All variance requests and submissions, including comments from parties during the waiting period, are to be submitted through MineSpace or where that is not possible to mine.safety@gov.bc.ca.

1.2.4 Postings: The manager shall ensure that a legible copy of each variance granted is posted and maintained on conspicuously located bulletin boards at the mine.

Guidance

This is intended to ensure mine personnel are aware of any variance. Mines Inspectors may assess compliance with posting requirements.