



**MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT (MINER ACT)**

Pub. L. No. 109-236, 120 Stat. 493 (2006)

<b>STATUS</b>	<i>Date of Enactment:</i> June 15, 2006.
<b>SCOPE</b>	For the most part, underground coal mines. Several provisions (e.g., accident notification and increased civil penalties) apply to all mines.  Amends the Federal Mine Safety and Health Act of 1977.
<b>NOTIFICATION OF ACCIDENT (SEC. 5)</b>	<p><i>Scope</i> – All mines.</p> <p><i>Timing</i> – Effective upon enactment, June 15, 2006.</p> <p><i>Notification Requirements</i> – Requires the operator to notify the Secretary within 15 minutes from realizing the occurrence of one of the following events :</p> <ol style="list-style-type: none"> <li>1. The death of an individual at the mine;</li> <li>2. An injury of an individual at the mine which has a reasonable potential to cause death; or</li> <li>3. The entrapment of an individual at the mine which has a reasonable potential to cause death.</li> </ol> <p><i>Penalties</i> – Civil penalty of not less than \$5,000 and not more than \$60,000 for failure to provide timely notification.</p>
<b>EMERGENCY RESPONSE PLAN (SEC. 2)</b>	<p><i>Scope</i> – Underground coal mines.</p> <p><i>Timing</i> – Not later than 60 days after date of enactment, August 14, 2006.</p> <p><i>Response &amp; Preparedness Plan</i> – Requires underground coal mines to develop and adopt a written accident response plan. Plans must provide for the evacuation of all individuals endangered in an emergency and for the maintenance of individuals trapped underground. Periodic updates required to reflect changes in the mine, advances in technology, or other relevant considerations.</p> <p><i>Plan Requirements</i> – Each plan must provide for the following:</p> <ol style="list-style-type: none"> <li>1. <u>Post-Accident Communications</u> – Provide for secondary telephone or equivalent two-way communication.</li> <li>2. <u>Post-Accident Tracking</u> – Provide for a tracking system to locate underground personnel. The system must allow above ground personnel to determine the current, or immediately pre -accident, location of all underground personnel. Must be consistent with commercially available technology and the physical constraints of the mine, as well as be functional, reliable, and serviceable in a post-accident setting.</li> </ol> <p>NOTE: Within three years of enactment, June 15, 2009, the plan must provide for a wireless two-way communication system and an electronic tracking system to determine the location of trapped miners underground; or set forth why such systems cannot be adopted, as well as an alternative means of compliance that approximates, as closely as possible, the degree of functional utility and safety precautions provided by such systems.</p>



## MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT (MINER ACT)

Pub. L. No. 109-236, 120 Stat. 493 (2006)

3. Post-Accident Breathable Air – Plan must provide for emergency supplies of breathable air and caches of self-rescuers.
  - A. *Emergency Supplies of Breathable Air* – Emergency supplies of breathable air to maintain trapped individuals for a sustained period of time.
  - B. *Caches* – Self-rescuers providing in the aggregate not less than 2 hours for each miner. This requirement is in addition to the 2 hours of breathable air per miner required under MSHA’s ETS (30 C.F.R. § 75.1714-4, 71 Fed. Reg. 12,252 (Mar. 9, 2006)). Caches must be kept in escapeways from the deepest work area to the surface at a distance of no further than an average miner could walk in 30 minutes.
  - C. *Maintenance Schedule* – For checking the reliability of SCSRs, retiring older SCSRs first, and introducing new SCSR technology approved by MSHA and available on the market. Provides examples of such technology, including units with interchangeable air or oxygen cylinders not requiring doffing to replenish airflow and units with supplies of greater than 60 minutes.
  - D. *Training* – Each miner must be trained in the proper procedures for donning SCSRs and ensuring a proper fit, as well as switching between units.
4. Post-Accident Lifelines – Provide for flame-resistant directional lifelines or equivalent systems in escapeways to enable evacuation. The flame-resistance requirement does not go into effect until the replacement of existing lifelines. Flame-resistant lifelines in working sections must be implemented the earlier of the replacement date or 3 years after enactment (June 15, 2009).
5. Training – A training program for emergency procedures that does not diminish the requirements for mandatory health and safety training currently required.
6. Local Coordination – Procedures for coordination and communication between the operators, mine rescue teams, and local emergency response personnel, as well as provisions for familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.

The Secretary may make additional plan requirements with respect to any of the above requirements.

**Plan Approval** – Plans are subject to review and approval by the Secretary, who must consider all comments submitted by miners and their representatives.

**Approval Criteria:** (1) afford miners a level of safety protection at least consistent with existing standards; (2) reflect the most recent credible scientific research; (3) be technologically feasible, make use of commercially available technology, and account for the specific physical characteristics of each mine; and (4) reflect improvements in mine safety. No approved plans may reduce the protection afforded miners by an existing mandatory health and safety standard.

**Periodic Review:** The Secretary must review these plans at least every 6 months, taking into consideration the comments from miners and their representatives, and technological and scientific advancements.



**MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT (MINER ACT)**

Pub. L. No. 109-236, 120 Stat. 493 (2006)

**Plan Dispute Resolution** – Requires disputes on the content of or refusal to approve an accident response plan to be resolved on an expedited basis. The resolution process includes: (1) the Secretary’s issuance of a citation and immediate referral to a Commission ALJ; (2) Parties must submit all relevant information to the ALJ within 15 days of the date of referral; (3) the ALJ must render a decision within 15 days of the receipt of the submission. Further appeals allowed.

**MINE RESCUE TEAMS (SEC. 4)**

**Scope** – Underground coal mines.

**Timing** – Regulations on mine rescue teams must be finalized and in effect not later than 18 months after enactment, December 15, 2007. Regulations to address the requirements outlined below.

**Mine Rescue Team Requirements Applicable to All Underground Coal Mines:**

1. Have an employee knowledgeable in mine emergency response on each shift at the mine.
2. Make available *two* certified mine rescue teams .
3. General Requirements for Team Members:
  - A. Familiar with the operations of the coal mine;
  - B. Participate at least annually in two local mine rescue contests; and
  - C. Available at the mine in one hour ground travel time from the mine rescue station.

**Mine Rescue Team Requirements Specific to Underground Coal Mines with > 36 Employees:**

1. **Training** – Members of the rescue team must participate at least *annually* in mine rescue training at the underground coal mine covered by the mine rescue team.
2. **Mine Rescue Team Options** – Operators must employ the following types of mine rescue teams:

Mine Rescue Team #1

- A. Individual Mine Site Mine Rescue Team, OR
  - B. Multi-Employer Composite Team.
- \* See below for specific requirements applicable to multi-employer and commercial mine rescue teams.

Mine Rescue Team #2

- A. Individual Mine Site Mine Rescue Team;
- B. Multi-Employer Composite Team;
- C. Commercial Mine Rescue Team; OR
- D. State-Sponsored Team (made up of state employees).



## MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT (MINER ACT)

Pub. L. No. 109-236, 120 Stat. 493 (2006)

### ***Mine Rescue Team Requirements Specific to Underground Coal Mines with = 36 Employees:***

1. **Training** – Members of the mine rescue team must participate at least semi-annually in mine rescue training at the underground coal mine covered by the team.
2. **Additional Requirements** – In addition to the mine rescue team requirements applicable to all underground coal mines, members of mine rescue teams for operators with = 36 employees:
  - A. Must be knowledgeable about the operations and ventilation of the covered mines.
  - B. If commercial/contract team is used, the members must have a minimum of 3 years underground coal mine experience occurring within the 10-year period preceding their employment on the team.

### ***Specific Requirements Applicable to Multi-Employer Composite and Commercial Mine Rescue Teams:***

1. ***Multi-Employer Composite Team*** – Comprised of team members that are:
  - A. Trained on a *semi-annual basis* at the covered mine; AND
  - B. Knowledgeable about the operations and ventilation of the covered mines.

**Qualified multi-employer composite teams include those that:**

  - A. Provide coverage for multiple operators that have team members, with at least 2 active employees from each of the covered mines;
  - B. Provide coverage for multiple mines owned by the same operator, with at least 2 active employees from each mine; **OR**
  - C. Are a state-sponsored mine team comprised of at least 2 active employees from each of the covered mines.
2. ***Commercial Mine Rescue Team*** – Provided by contract through a third-party vendor or mine rescue team provided by another coal company. Such teams must be:
  - A. Trained on a *quarterly basis* at the covered mines;
  - B. Knowledgeable about the operations and ventilation of the covered mines; AND
  - C. Comprised of individuals with a minimum of 3 years underground coal mine experience, which have occurred within the 10-year period preceding their employment on the team.

***Certification*** – MSHA must establish criteria to certify the qualifications of mine rescue teams. Such criteria must be updated every 5 years. Operator training requirements applicable to existing mine rescue teams remain in effect.

***Limitation of Liability for Rescue Operations*** (Sec. 3) – Prohibits an action against a member of a mine rescue team, a volunteer for mine rescue, or his or her regular employer for property damage or injury or death sustained from carrying out rescue or recovery operations. Actions may be filed for property damage, injury, or death resulting from gross negligence, reckless conduct,



**MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT (MINER ACT)**

Pub. L. No. 109-236, 120 Stat. 493 (2006)

or illegal conduct, or where the regular employer is the operator of the mine at which the rescue activity occurs. Does not preempt State workers' compensation laws.

**Policy on Family Liaisons** – Secretary directed to establish a policy that:

1. Requires the temporary establishment of a DOL official to act as the liaison between the Department and the families of victims of mine tragedies involving multiple deaths.
2. Requires MSHA to be as responsive as possible regarding information requests from families of mine accident victims for information relating to mine accidents.
3. Requires MSHA to serve as the primary communicator with the operator, miners' families, the press, and the public.

**PENALTIES (SEC. 8)**

**Scope** – All mines.

**Timing** – June 15, 2006. Secretary must promulgate final regulations not later than December 30, 2006.

**Civil Penalties** –

1. Imposes a minimum \$2,000 penalty for any citation or order issued for violations of mandatory health and safety standards under section 104(d)(1).
2. Imposes a minimum \$4,000 penalty for any orders issued under section 104(d)(2) regarding violations of mandatory health and safety standards.
3. Imposes a maximum civil penalty of \$220,000 for flagrant violations. The term “flagrant” is defined as “a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially or proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.”

**Criminal Penalties** – Establishes a maximum fine of \$250,000, or imprisonment of not more than 1 year, or both, against any operator who willfully violates a mandatory health and safety standard, or knowingly violates or fails or refuses to comply with any order issued under Sections 104 and 107, or any order incorporated in a final decision issued under the Act, except an order incorporated in a decision under section 110(a)(1) or section 105(c). Such fine is increased to a maximum of \$500,000, or 5 years, or both for second or more offenses.

**Civil Penalty Collection & Injunctions** – Allows MSHA to request an injunction when operators or their agents fail or refuse to comply with any order or decision, including a civil penalty assessment order.

**REFUGE ALTERNATIVES STUDY (SEC. 13)**

**Timing** – NIOSH report not later than 18 months after enactment, December 15, 2007. Secretary's recommendations not later than 180 days after receiving the report.

**NIOSH Research on Rescue Chambers** – Requires NIOSH to conduct research, including field tests, concerning the utility, practicality, survivability, and cost of various refuge alternatives in an underground coal mine environment, including



**MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT (MINER ACT)**

Pub. L. No. 109-236, 120 Stat. 493 (2006)

commercially-available portable refuge chambers.

NIOSH must submit a report not later than December 15, 2007 to the Secretary of Labor, the Secretary of Health and Human Services, the Senate HELP Committee, and the House Committee on Education and Workforce on the results of such research.

**Secretary of Labor’s Duties** – The Secretary of Labor must respond to the respective committees not later than 180 days after receiving the report, providing a description of what actions, including regulatory changes, she intends to take.

**SEALING OF ABANDONED AREAS (SEC. 10)**

**Timing** – Required 18 months after the enactment, December 15, 2007.

**Finalization of Standard** – Requires the Secretary to finalize mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines. Such standards must provide for an increase in the current 20 psi standard.

**BELT ENTRY AIR (SEC. 11)**

**Scope** – Underground coal mines.

**Technical Study Panel** – Established to provide independent scientific and engineering review and recommendations with regard to the utilization of belt air and the composition of fire retardant properties of belt materials in underground coal mines.

**Membership** – (1) two individuals appointed by the Secretary of Health and Human Services in consultation with the Director of NIOSH and the Associate Director of the Office of Mine Safety; (2) two individuals appointed by the Secretary of Labor in consultation with the Assistant Secretary for MSHA; (3) two individuals, one appointed jointly by the majority leaders of the Senate and House, and one appointed jointly by the minority leader of the Senate and House.

**Qualifications** – Four of the six individuals appointed must possess a masters or doctoral level degree in mining engineering or demonstrably related scientific field. None of the appointed individuals may be an employee of any coal or other mine, labor organization, or state or federal agency primarily responsible for regulating the mining industry.

**Panel’s Report** – Due within 1 year of the date on which all the members are appointed to the Secretary of Labor, the Secretary of Health and Human Services, the Senate HELP Committee, and the House Committee on Education and Workforce.

**Secretary’s Recommendations** – The Secretary must provide a response to the respective committees on what, if any, actions she intends to take based on the report, including proposing regulatory changes, and the reasons for such actions, no later than 180 days after receiving the report.

**RESEARCH & CONSULTATION ON TECHNOLOGY (SEC. 6)**

**Office of Mine Safety and Health** – Established within NIOSH to research, develop, and test new technologies and equipment designed to enhance mine safety and health through:

1. Award of competitive grants to institutions and private entities.
2. Award of contracts to educational institutions or private laboratories.
3. Establishment of an interagency working group comprised of representatives of other federal agencies and departments to share and evaluate technology and technological research and developments that may be applicable to mine safety. The working



**MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT (MINER ACT)**

Pub. L. No. 109-236, 120 Stat. 493 (2006)

group must provide recommendations to the Director of NIOSH on development and implementation of such technology.  
No later than 1 year after the establishment of the office, and annually thereafter, the Director must submit to the Senate HELP Committee and the House Committee on Education and Work force a report describing new mine safety technologies and equipment that have been studied, tested, and certified for use, as well as those technologies considered but not yet certified for use.