

1501:10-2-27**Diesel Technical Advisory Committee.**

(A) The diesel technical advisory committee, as defined in rule 1501:10-2-02 of the Administrative Code, is hereby established and approved in accordance with section 121.13 of the Revised Code. Any alternate operating procedure, alternative technology, major operational change, or new technology recommended by the technical advisory committee or approved by the chief shall not reduce or compromise the level of health and safety protection afforded by this chapter.

(B) Membership. The diesel technical advisory committee shall consist of two members appointed by the chief. The chief shall appoint one of the two members to be chairperson of the technical advisory committee. The chief shall appoint:

(1) One member from a list of qualified candidates nominated by the Ohio coal association; and

(2) One member who works at an Ohio underground coal mine utilizing diesel equipment and who is elected by two or more miners as the miners' safety representative at that mine, except that, for the initial appointment of this member, the chief shall appoint a person who works at an Ohio underground coal mine and who is familiar with the use of diesel equipment at or around underground coal mines.

(C) Terms. Each member of the diesel technical advisory committee shall be appointed for a term of three years. The chief may reappoint a member to serve an unlimited number of successive three-year terms.

(D) Functions. The diesel technical advisory committee shall provide the chief with technical advice and recommendations concerning the technical operating aspects of underground diesel-powered equipment. In fulfilling its role, the technical advisory committee shall, at the written request of the chief, be available to:

(1) Review and make recommendations to the chief regarding implementation of the use of diesel equipment in underground coal mines pursuant to Chapter 1501:10-2 of the Administrative Code;

(2) Advise the chief regarding operating parameters for the use of diesel-powered equipment in shaft and slope construction operations at underground coal mines;

(3) Evaluate an alternative operating procedure, alternative technology, new technology or major operational change for diesel-powered equipment used in underground coal mines;

(4) Provide technical assistance to operators regarding diesel equipment technologies;

(5) Conduct investigations along with the chief's representative, and technical

investigations relating to implementation of the use of diesel equipment in underground coal mines; and

- (6) Provide training regarding the implementation of diesel equipment emission controls and emission testing.
- (E) Expenses. Members of the diesel technical advisory committee shall be unpaid volunteers representing the interests, health, and safety of underground coal miners in the state of Ohio. A member shall receive no compensation but shall be reimbursed from the mine safety fund for the actual and necessary expenses incurred in the performance of the member's function as a member of the technical advisory committee.
- (F) Meetings. The diesel technical advisory committee, after approval by the chief, shall meet at least quarterly, at times as scheduled by the chairperson.
- (G) Quorum. Actions of the diesel technical advisory committee require that both members be present.
- (H) Unanimous recommendation. If a recommendation of the diesel technical advisory committee receives a unanimous vote from the committee members, the committee shall submit this recommendation to the chief in writing, including details regarding the advantages and disadvantages of taking the recommended action.
- (I) Divided recommendation. If a recommendation does not receive a unanimous vote from the committee members, each committee member shall submit a detailed written report to the chief explaining the reasons for his or her position for or against the recommendation.
- (J) Chief to provide support to the diesel technical advisory committee.

 - (1) The chief shall make clerical support and assistance available to enable the technical advisory committee to carry out its duties.
 - (2) The chief shall make available to the technical advisory committee equipment for testing diesel engine exhaust emissions and for measuring diesel engine surface temperatures and exhaust gas temperatures.
- (K) Technical investigation of an alternate operating procedure, alternative technology, major operational change, or new technology.

 - (1) Upon request of a coal miner, coal mine operator or diesel-related technology manufacturer, or on its own motion, the diesel technical advisory committee shall conduct a technical investigation of the use of an alternate operating procedure, alternative technology, major operational change, or new technology, provided that the chief approves the technical investigation in writing. A technical advisory committee recommendation resulting from an

investigation under this paragraph and approved by the chief may be applicable to all underground coal mines in Ohio upon written notice by the chief to affected persons.

- (2) Upon notice of a request of a coal mine operator, and with the written approval of the chief, the technical advisory committee shall consider a site-specific request for use of an alternate operating procedure, alternative technology, major operational change, or new technology. The technical advisory committee's recommendation on a request submitted under this paragraph shall be on a site-specific basis. The technical advisory committee shall conduct an investigation which shall include consultation with the mine operator and the authorized representatives of the miners at the mine. If there is no authorized representative of the miners for the particular mine, the technical advisory committee shall consult with a reasonable number of miners at the mine.
- (3) Within one hundred eighty days of receipt of a written request by the chief under paragraph (K)(1) or (K)(2) of this rule, the technical advisory committee shall complete its investigation and make a recommendation to the chief. The time period under this paragraph may be extended with the consent of the person who submitted the request. The technical advisory committee members shall only recommend approval of the use of an alternate operating procedure, alternative technology, major operational change, or new technology if, at the conclusion of the investigation, the committee members have made a determination that use of the alternate operating procedure, alternative technology, major operational change, or new technology will not reduce or compromise the level of health and safety protection afforded by this chapter.
- (4) The diesel technical advisory committee shall submit to the chief one of three possible recommendations:

 - (a) A unanimous recommendation to approve the request for use of an alternate operating procedure, alternative technology, major operational change, or new technology. A recommendation under this paragraph shall be made in writing and include the results of the investigation, the advantages and disadvantages of taking the recommended action, and specific conditions of use for the alternate operating procedure, alternative technology, major operational change, or new technology;
 - (b) A unanimous recommendation to reject the request for use of an alternate operating procedure, alternative technology, major operational change, or new technology. A recommendation under this paragraph shall be made in writing and explain in detail the basis for the rejection; or
 - (c) A divided recommendation on the use of an alternate operating procedure,

alternative technology, major operational change, or new technology. If there is a divided recommendation, each member of the committee shall submit a detailed report to the chief, within fourteen days of the technical advisory committee's vote, explaining the reasons for the member's position for or against the recommendation.

(5) All recommendations shall identify all persons with whom the technical advisory committee consulted during the technical investigation.

(L) Action by the chief.

(1) The chief may request the technical advisory committee to conduct a technical investigation in accordance with paragraph (K) of this rule whenever a mine operator proposes any use of underground diesel equipment in a manner that is not specifically permitted by rules 1501:10-2-01 to 1501:10-2-27 of the Administrative Code.

(2) Decision by the chief following a unanimous recommendation.

(a) If the technical advisory committee submits a unanimous recommendation to the chief, the chief shall have thirty days to make a decision either approving or rejecting the technical advisory committee's recommendation. With the consent of the person who submitted the request, this time period may be extended. If the chief does not make a decision within the time requirements or any extension of the time requirements of this paragraph, the technical advisory committee's recommendation shall be deemed rejected.

(b) If the chief approves the recommendation of the technical advisory committee with modification, the chief shall notify the technical advisory committee, in writing, of the modification and the reasons for the modification.

(3) Decision by the chief following a divided recommendation.

(a) If the technical advisory committee submits a divided recommendation to the chief, the chief may, within thirty days, set a date for a meeting with the members of the technical advisory committee to discuss the reasons for the divided recommendation and to determine whether additional information and further discussion might result in a unanimous recommendation by the technical advisory committee.

(b) The chief shall have sixty days from the date of the meeting with the technical advisory committee, or, if no meeting is held, sixty days from receiving the recommendation, to make a decision either approving or rejecting the technical advisory committee's recommendation. With the consent of the person who submitted the request, this time period may

be extended. If the chief does not make a decision within the time requirements or any extension of the time requirements of this paragraph, the technical advisory committee's recommendation shall be deemed rejected.

(c) If the chief approves a recommendation of the technical advisory committee with modification, the chief shall notify the technical advisory committee, in writing, of the modification and the reasons for the modification.

(4) The chief may approve the use of an alternate operating procedure, alternative technology, major operational change, or new technology in accordance with paragraph (K) of this rule if approval does not reduce or compromise the level of health and safety protection afforded by this chapter.

(M) Action taken by the chief under this rule is subject to appeal under section 1513.13 of the Revised Code.

Effective: 11/03/2011
R.C. 119.032 review dates: 10/24/2016

CERTIFIED ELECTRONICALLY

Certification

10/24/2011

Date

Promulgated Under: 119.03
Statutory Authority: 1513.02
Rule Amplifies: 121.13, 1513.02, 1567.35