

**Notice of Adoption of Final Rule
New York City Department of Environmental Protection**

Notice is hereby given pursuant to the authority vested in the Commissioner of the Department of Environmental Protection (“Department” or “DEP”) by Section 1043(a) of the New York City Charter and section 24-105 of the Administrative Code of the City of New York that the Department promulgates and adopts amendments to 15 RCNY Chapter 39, section 39-01 to define what constitutes a processing device for the purposes of the idling provision in section 24-163 of the Administrative Code.

Statement of Basis and Purpose of Rule

The rule amends Chapter 39 of Title 15 of the Rules of the City of New York to add a new definition to section 39-01 to clarify what constitutes a processing device as it relates to vehicle idling in section 24-163 of the Administrative Code. The proposed rule was published in the City Record on January 26, 2022, and a public hearing was held on March 2, 2022.

Section 24-163 prohibits, in relevant part, the idling of a motor vehicle engine for longer than three minutes or one minute if adjacent to a school, unless the engine is used to operate a loading, unloading, or processing device. This exception for processing devices has been a part of the Air Pollution Control Code since the Code’s enactment in 1971. However, the definition of “processing device” has not been set forth in either the Administrative Code or the Rules of the City of New York. Instead, the term processing device has been defined in informal FAQs on the Department of Environmental Protection’s website and developed through decisions before the Office of Administrative Trials and Hearings.

The final rule defines a “processing device” as a device that is necessary to accomplish the vehicle’s designed function via a mechanical connection to the engine (e.g., a cement mixer), or is a temperature control system for food or other temperature-sensitive items.

Several comments suggested that the proposed definition of processing device is broad enough to allow idling in a wide array of circumstances, including running the air conditioner for cabin comfort, charging a cell phone, or keeping headlights on. Other comments suggested that the term processing device should exclude devices that have such a power consumption requirement that they could be powered by auxiliary power sources. The final rule adjusts the definition of “processing device” to make explicit that the term does not include a heater or air conditioner used for cabin comfort. Further, in order to exclude non-essential equipment and those devices that can be powered by an alternative source of power, this rule requires that the device accomplish the vehicle’s intended function via a mechanical connection to the engine. So, for example, a cell phone charger, laptop or cargo lights would not be processing devices both because the vehicle was not designed to charge or power cell phones, laptops or cargo lights, and because those pieces of equipment are not operated via a mechanical connection to the engine.

Commenters also proposed that the definition of “process” guide the definition of “processing device.” DEP does not agree with that approach, and the final rule makes clear that the terms “process” and “processing device,” as used in the Administrative Code, are not related.

The Administrative Code defines “process” as:

any industrial, commercial, agricultural or other activity, operation, manufacture or treatment in which chemical, biological and/or physical properties of the material or materials are changed, or in which the material(s) is conveyed or stored without changing the material(s) (where such conveyance or storage system is equipped with a vent(s) and is non-mobile), and which emits air contaminants to the outdoor atmosphere. A process does not include an open fire, operation of a combustion installation, or incineration of refuse other than by-products or wastes from processes.

Ad. Code § 24-104. The term “process” is relevant to the determination of whether a certificate of operation is necessary under section 24-122 of the Administrative Code. See Ad. Code § 24-122(b) (“No person shall cause or permit the use or operation of the following equipment, or cause or permit the keeping of any such equipment so as to be capable of being used or operated, without first obtaining a certificate of operation from the commissioner. ... (2) Equipment used in a process...”). Further, the terms “process” and “processing device” are used in different subchapters of the Air Pollution Control Code: “process” is used in subchapter 4 (“Permits and Certificates”) while the term “processing device” is used in subchapter 7 (“Equipment and Apparatus: Use and Maintenance”). Accordingly, the term “process” has no bearing on the meaning of “processing device” as such term is used in the anti-idling law.

Another comment suggested that the rule include language providing that a processing device must be a device that is actually being used to accomplish the work for which the vehicle was designed at the time of the idling. We do not think that is necessary to include in the definition of “processing device” because the Administrative Code provides that a vehicle is exempt from the idling prohibitions only if the “engine *is used* to operate” the processing device. Ad. Code § 24-163(a). In other words, the requirement that the engine be running in order to power the processing device is already set forth in the underlying legislation.

Finally, some commenters suggest that the task of defining “processing device” lies with the City Council and not with DEP. However, the final rule fills in the gaps of the legislative framework set forth in the Air Pollution Control Code, and thus falls within DEP’s rulemaking authority. See Ad. Code § 24-105(a). That the City Council once considered legislation that would have defined “processing device” does not mean that such action is necessary to accomplish that purpose.

Sections 1043(a) and 1403(c) of the New York City Charter and section 24-105 of the Administrative Code authorize the Department to issue this proposed rule.

New material is underlined.

Section 1. Section 39-01 of Title 15 of the Rules of the City of New York is amended by adding a definition of “processing device,” in appropriate alphabetical order, to read as follows:

Processing Device. For purposes of section 24-163 of the administrative code, the term “processing device” shall mean:

(1) a device that accomplishes the function for which the vehicle or equipment was designed, other than transporting goods or people, via a mechanical connection to the engine, including operating a lift, crane, pump, drill, hoist, or mixer; or

(2) a system that controls the environment of temperature-sensitive cargo or substances, including but not limited to food, provided that such cargo or substances are being transported in a vehicle designed for the transportation of such cargo or substances.

The term “processing device” shall not include a heater or air conditioner operated for cabin comfort.