

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 (“DEP” or the “Department”) by section 1043 of the New York City Charter and section 24-105 of the Administrative Code that the Department promulgates and adopts a rule clarifying the definition of “processing device” for purposes of the idling provision (section 24-163) of the Administrative Code.

Statement of Basis and Purpose of Final Rule

This rule makes an adjustment to the definition of “processing device,” as set forth in section 39-01 of Title 15 of the Rules of the City of New York to clarify that the six examples of processing devices listed in the rule – a lift, crane, pump, drill, hoist, or mixer – are illustrative, rather than exhaustive.

Section 24-163 of the Administrative Code 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. DEP’s rules define “processing device” as a device that is necessary to accomplish the vehicle’s designed function via a mechanical connection to the engine, or is a temperature control system for food or other temperature-sensitive items. In conjunction with the first part of the definition, the rule lists six devices (lift, crane, pump, drill, hoist, or mixer) as examples of “processing devices” after the word “including.” This list is not meant to be exhaustive. Instead, these devices are examples of processing devices.

In a recent decision (DEP v. Con Edison, appeal # 2200691), the OATH Appeals Board determined that flashing lights are not processing devices for the purposes of section 24-163 of the Administrative Code. The decision reasoned that flashing lights are not a device that accomplishes the function for which the vehicle was designed. Unlike the six enumerated examples of processing devices, flashing lights are not a mechanical process that the vehicle was constructed to carry out. The Department agrees with that analysis, and thus agrees that the vehicle’s flashing lights are not a processing device. However, the decision further suggested that any devices not specified after the word “including” in 15 RCNY section 39-01 are understood to be excluded, citing the *expressio unius* canon of construction. It concluded that flashing lights are not processing devices for that additional reason as well.

The Department did not intend to limit the definition of “processing device” to the six enumerated examples. Accordingly, this rule clarifies that the six specified devices are not exhaustive by adding the words “but not limited to” after “including.” This adjustment is meant only to clarify the definition of “processing device,” and is not intended to alter the scope of the term.

The proposed rule was published in the City Record on November 28, 2022, and a public hearing was held on December 29, 2022. Several comments expressed opposition to the amendment on the grounds that it would weaken the existing rule. However, as explained above, the rule is a clarification made necessary by OATH’s finding that processing devices were limited to the six specified items, which was not DEP’s intention. The clarification does not expand the scope of the exception, which remains limited to devices that accomplish the function for which the vehicle was designed via a mechanical connection.

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. The definition of “Processing Device” in section 39-01 of Title 15 of the Rules of the City of New York is amended 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 but not limited to 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.