

New York City Department of Environmental Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Environmental Protection is proposing to amend its rules to clarify the definition of “processing device” for purposes of the idling provision (section 24-163) of the Administrative Code.

When and where is the hearing? DEP will hold a public hearing on the proposed rule online. The public hearing will take place at 11 am on December 29, 2022. To participate in the public hearing, please follow these instructions:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 211 272 666 510

Passcode: GmcSaq

Or call in (audio only)

[+1 347-921-5612,,178242564#](#)

Phone Conference ID: 178 242 564#

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by December 29, 2022.

What if I need assistance to participate in the hearing? You must tell the Department's Bureau of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 718-595-6531. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by December 22, 2022.

This location has the following accessibility option(s) available: Not applicable

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Department's Bureau of Legal Affairs.

What authorizes the Department to make these rules? Section 1043(a) and subdivision (c) of section 1403 of the New York City Charter ("Charter") and section 24-105 of the Administrative Code of the City of New York authorize the Department to make these proposed rules. These proposed rules were not included in the Department's regulatory agenda for this Fiscal Year as they were not contemplated at the time of publication of the agenda.

Where can I find the Department's rules? The Department's rules are in Title 15 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must meet the requirements of Section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Subdivision (b) of 1043 of the Charter.

Statement of Basis and Purpose of Rule

This proposed 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. 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 proposed 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.

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.

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment of Engine Idling Rules

REFERENCE NUMBER: DEP-92

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

November 17, 2022

Date

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-356-4028

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Amendment of Engine Idling Rules

REFERENCE NUMBER: 2022 RG 087

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: November 16, 2022

Acting Corporation Counsel

