

## Department of Labor

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Prevailing Wage for Aggregate Hauling

I.D. No. LAB-37-22-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Addition of Part 222 to Title 12 NYCRR.

**Statutory authority:** Labor Law, section 21(11)

**Subject:** Prevailing Wage for Aggregate Hauling.

**Purpose:** To clarify the application Labor Law section 220(3-a)(f).

**Text of proposed rule:** A new Part 222 is added to Chapter III of title 12 NYCRR to read as follows:

*Part 222 - Hauling of Aggregate Supply Construction Materials*  
§ 222.1 Definitions

*For the purposes of Section 220 of the Labor Law:*

(a) "Worksite" means the area in which the improvements associated with a specific project, as defined in the construction contract, and any surrounding areas supporting that specific project.

(b) "Central stockpile" means a location of centrally stockpiled materials solely dedicated for use on a public work project that is not part of a worksite but intended to support the worksite.

(c) "Aggregate supply construction materials" means sand, gravel, stone, crushed stone, dirt, soil, millings, and fill.

§ 222.2 Application

*For the purposes of Section 220 of the Labor Law:*

(a) Prevailing wage shall be paid for work performed at a worksite involving the delivery of aggregate supply construction materials to such worksite.

(b) Prevailing wage shall be paid for work performed involving the hauling of aggregate supply construction materials from a worksite to a central stockpile, as well as any return hauls, empty or loaded, time spent loading or unloading at a worksite, and time spent loading or unloading at a central stockpile related to hauls from or to a worksite.

(c) Prevailing wage shall be paid for work performed within a 50-mile radius of a worksite involving the delivery of aggregate supply construction materials from a vendor of aggregate supply construction materials, such as a plant or quarry, to a worksite, except prevailing wage shall not be paid to direct employees of a supplier of aggregate supply construction materials, when making a single delivery in a given day.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jill Archambault, Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY, (518) 485-2191, email: regulations@labor.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 60 days after publication of this notice.

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

#### Regulatory Impact Statement

1. Statutory Authority: The statutory authority for the promulgation of this rule is the Commissioner's rulemaking authority under Labor Law § 21(11).

2. Legislative Objectives: To administratively promulgate regulations governing any provision in the Labor Law that she deems necessary and proper under Labor Law § 21(11).

Section 220(3-a)(f) of the Labor Law ("Section 220(3-a)(f)") requires prevailing wage be paid for work performed on a public works worksite for any work involving the delivery to and hauling from such worksites of aggregate supply construction materials, as well as any return hauls, whether empty or loaded, and any time spent loading/unloading. Neither the Labor Law, nor amendments to Section 220(3-a)(f) clearly define terms necessary to implement this new law.

When Section 220(3-a)(f) was initially enacted on December 31, 2021, the Governor's Approval Memorandum to Senate Bill 255-B stated: "I have reached an agreement with the Legislature to clarify that prevailing wage will be paid only at the worksite itself and for travel between the worksite and a designated central stockpile where aggregate supply construction materials are delivered. Prevailing wage will not apply to out of jurisdiction deliveries of aggregate supply materials to the designated

central stockpile." Subsequently, Section 220(3-a)(f) was amended to reflect the agreement described in the Governor's Approval Memorandum; however, the amendment introduced new terms, such as "worksite," that were not defined. These undefined terms leave open questions about the application of the law.

3. Needs and Benefits: The purpose of this rule is to clarify the application of Section 220(3-a)(f). This rule defines when prevailing wage is required by this law by defining key terms applicable to conditions within the scope of the statute.

The rule defines the terms "worksite," "central stockpile," and "aggregate supply construction materials." The rule further clarifies that prevailing wage is required to be paid for delivering and hauling aggregate supply construction materials within a worksite, including the specific project site defined by the contract, surrounding areas, and central stockpiles, as well as delivering such materials within a 50-mile radius of a worksite.

The proposed rule provides clarity to the regulated community as to the requirements of the Labor Law. The rule will be beneficial to employers as it will reduce uncertainty and potential violations by providing clear definitions for compliance.

#### 4. Costs:

(a) Costs to Regulated Parties: The proposed rule is not expected to impose any new costs on the regulated community since, as described above, the rule provides definitions and clarity as to the existing requirements of Section 220(3-a)(f). The proposed rule implements the statute while avoiding any costs above what the law already requires.

(b) Costs to Agency, the State and Local Governments: None.

(c) The Information, Including the Sources of Such Information: The proposed rule does not impose any new mandates or costs; rather, it provides clarity to Section 220(3-a)(f).

5. Local Government Mandates: The proposed rule does not impose any new mandates.

6. Paperwork: There are no changes in the reporting or record-keeping requirements proposed by this rule; existing requirements for public work covered by Article 8 of the Labor Law remain unchanged.

7. Duplication: No relevant rules or other legal requirements of the State and/or federal government exist that duplicate, overlap, or conflict with this rule.

8. Alternatives: The Department considered a similar regulation that only provided definitions without any clarity as to the application of Section 220(3-a)(f); however, this would be insufficient to provide necessary clarity to the regulatory community.

9. Federal Standards: There are no minimum standards of the federal government for this or a similar subject area.

10. Compliance Schedule: The regulated community will be required to comply with this regulation upon its effective date.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule:

This rule clarifies the application of Section 220(3-a)(f) of the Labor Law ("Section 220(3-a)(f)"). This rule defines when prevailing wage is required by this law by defining key terms applicable to conditions within the scope of the statute.

##### 2. Compliance requirements:

There are no changes in the reporting or record-keeping requirements proposed by this rule; existing requirements for public work covered by Article 8 of the Labor Law remain unchanged.

##### 3. Professional services:

No professional services would be required to comply with this rule.

##### 4. Compliance costs:

This proposed rule is not expected to impose any additional compliance costs separate and apart from the costs already associated with Section 220(3-a)(f). The proposed rule implements the statute while avoiding any costs above what the law requires, and provides clarity to the regulated community as to the requirements of Section 220(3-a)(f). In so doing, the proposed rule will be beneficial to employers as it will reduce uncertainty and potential violations by providing a clear framework for compliance.

##### 5. Economic and technological feasibility:

Compliance with this proposed rule will be economically and technologically feasible because this proposed rule simply provides clarity to the regulated community as to the requirements of Section 220(3-a)(f).

##### 6. Minimizing adverse impact:

The proposed rule was written to provide clarity to implement Section 220(3-a)(f), as well as to avoid adverse impact on employers (including small businesses) and employees.

##### 7. Small business and local government participation:

Small businesses and local governments may submit public comments during the public comment period. The Department, as part of its implementation of 220(3-a)(f), will publish public awareness information on its website.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Not applicable.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

Not applicable.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The proposed rule provides definitions and standards paying wages as required by Section 220(3-a)(f) of the Labor Law (“Section 220.3-a(f)”). Like Section 220(3-a)(f), the proposed rule applies uniformly across the entirety of New York State, including all rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

There are no changes in the reporting or record-keeping requirements proposed by this rule; existing requirements for public work covered by Article 8 of the Labor Law remain unchanged.

3. Costs:

This proposed rule is not expected to impose any additional compliance costs separate and apart from the costs already associated with Section 220(3-a)(f). The proposed rule implements the statute while avoiding any costs above what the law requires, and provides clarity to the regulated community as to the requirements of Section 220(3-a)(f). In so doing, the proposed rule will be beneficial to employers as it will reduce uncertainty and potential violations by providing a clear framework for compliance, and it is not anticipated that there will be costs to rural areas to implement this regulation.

4. Minimizing adverse impact:

The Department does not anticipate that this regulation will have an adverse impact upon any region of the state, or an adverse impact on rural areas. The proposed rule was written to provide clarity to implement Section 220(3-a)(f), and through this clarity, to avoid adverse impact on employers.

5. Rural area participation:

Rural areas may submit public comments during the public comment period. The Department, as part of its implementation of 220(3-a)(f), will publish public awareness information on its website.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

Not applicable.

#### **Job Impact Statement**

1. Nature of impact:

The proposed rule is not expected to have a negative impact on jobs in New York State and will clarify terms as part of the implementation of Section 220(3-a)(f) of the Labor Law (“Section 220(3-a)(f)”). The proposed rule defines terms used in Section 220(3-a)(f), which requires prevailing wage be paid in the haulage of aggregate supply construction materials. By enacting Section 220(3-a)(f), the Legislature sought to regularize wages for the haulers of aggregates. By defining these terms the proposed rule will be beneficial to employers as it will reduce uncertainty and potential violations by providing a clear framework for compliance.

2. Categories and numbers affected:

Employers who engage in contracts for public work are already affected by Section 220(3-a)(f). The proposed rule is not expected to change or increase any impact from Section 220(3-a)(f), and employers will benefit from this proposed rule as it provides clarity as to when prevailing wage must be paid.

3. Regions of adverse impact:

These regulations are not anticipated to have a disproportionate impact upon any area of the State.

4. Minimizing adverse impact:

The proposed rule is not expected to have a substantial impact on jobs or on employment opportunities. The proposed rule was written to provide clarity to implement Section 220(3-a)(f).

5. Self-employment opportunities:

Not applicable.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

Not applicable.

**Proposed Action:** The Long Island Power Authority proposes to modify its Tariff for Electric Service to authorize the distribution of bill credits to eligible low to moderate income customers participating in the Solar Communities Feed-In Tariff.

**Statutory authority:** Public Authorities Law, section 1020-f(u) and (z)

**Subject:** Solar Communities Program.

**Purpose:** To provide bill savings benefits to customers participating in Solar Communities.

**Public hearing(s) will be held at:** 2:00 p.m., Nov. 16, 2022 at 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553; 10:00 a.m., Nov. 17, 2022 at 100 Veterans Memorial Hwy., Hauppauge, New York 11788 or refer to schedule on: [www.lipower.org](http://www.lipower.org)

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule:** The Long Island Power Authority (“LIPA” or the “Authority”) Staff (“Staff”) proposes to modify LIPA’s Tariff for Electric Service (the “Tariff”), effective January 1, 2023, to authorize the distribution of bill credits to eligible low to moderate income (“LMI”) customers based on the output of solar photovoltaic renewable resources participating in the Solar Communities Feed-In Tariff (“Solar Communities FIT”).

**Text of proposed rule and any required statements and analyses may be obtained from:** Elisa Rodriguez, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: [tariffchanges@lipower.org](mailto:tariffchanges@lipower.org)

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** Five days after the last scheduled public hearing.

#### **Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

### Authority’s Small Generator Interconnection Procedures for Distributed Generators and/or Energy Storage Systems

I.D. No. LPA-37-22-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Long Island Power Authority proposes to modify its interconnection procedures to implement new cost sharing rules consistent with New York’s statewide cost sharing framework.

**Statutory authority:** Public Authorities Law, section 1020-f(u) and (z)

**Subject:** Authority’s Small Generator Interconnection Procedures for Distributed Generators and/or Energy Storage Systems.

**Purpose:** Alignment with New York’s statewide cost sharing framework.

**Public hearing(s) will be held at:** 2:00 p.m., Nov. 16, 2022 at 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553; 10:00 a.m., Nov. 17, 2022 at 100 Veterans Memorial Hwy., Hauppauge, New York 11788 or refer to schedule on: [www.lipower.org](http://www.lipower.org)

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule:** The Long Island Power Authority (“LIPA” or the “Authority”) Staff (“Staff”) proposes to modify the Small Generator Interconnection Procedures for Distributed Generators and/or Energy Storage Systems Less than 10 MW Connected in Parallel with LIPA’s Radial Distribution Systems (the “SGIP”), which is an addendum to LIPA’s Tariff for Electric Service (the “Tariff”) that provides the interconnection procedures for Distributed Generators (“DG”) and Energy Storage

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## Long Island Power Authority

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### **Solar Communities Program**

I.D. No. LPA-37-22-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule: