

New Jersey's Dual-Use Solar Energy Pilot Program Rule Proposal – Informational Session



December 17, 2024

Welcome

This is the public informational session for:

Docket No. [QX24080597](#)

In the Matter of

A Rulemaking Proceeding to Establish the Dual-Use Solar Energy Pilot Program Pursuant to P.L. 2021, c. 170

This session will focus on all parts of the Dual-Use Solar Energy Pilot Program Rule Proposal issued on December 2, 2024.

Informational Session Webinar Format

- All attendees will be automatically muted.
- Questions? Please use the Q&A function in Zoom. Attendees can post questions and view (but not comment on) questions posted by others.
- We will address clarifying questions at the end of the presentation. These will be collected as Q&As and posted to the docket.
- This meeting is being recorded. A copy of the recording and slides will be made available on the BPU website:
<https://www.nj.gov/bpu/newsroom/public/>

Disclaimer

This presentation is provided for informational purposes only and should not be taken to represent the views of the New Jersey Board of Public Utilities, its Commissioners, or the State of New Jersey. Please be aware that any information presented is subject to change if there are changes to New Jersey statutes, rules, or policies.

All viewers are responsible for ensuring that they rely only on current legal authority regarding the matters covered in the presentation.

Guidelines for Written Stakeholder Comments

- The deadline for comments on the Dual Use Solar Energy Pilot Rule Proposal is **5:00 p.m. ET on Friday, January 31, 2025.**
- Please submit comments directly to Docket No. QX24080597, using the “Post Comments” button on the Board’s Public Document Search tool.
- Comments are considered “public documents” for purposes of the State’s Open Public Records Act and any confidential information should be submitted in accordance with the procedures set forth in N.J.A.C. 14:1-12.3.

Guidelines for Written Stakeholder Comments

- Written comments may also be submitted to:
Sherri L. Golden
Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Ave., 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350
Attn: Docket No. QX24080597
Phone: 609-292-1599
Email: board.secretary@bpu.nj.gov

Today's Speakers & Panelists

NJBPU	NJDA	NJDEP	Rutgers/RAP
Bence Oliver, Deputy Director	Frank Minch, Director, Agricultural & Natural Resources	Steve Myers, Climate Change and Clean Energy	Dave Specca, Assistant Director, RAP
Jusleen Basra	Steve Bruder, SADC		Dunbar Bernie
Rachel Boylan			AJ Both
Lauren Laggy			Ethan Schoolman
Sawyer Morgan			Kevin Sullivan
Laura Scatena			Dan Ward
Diane Watson			

Agenda

1. Timeline and Milestones for Dual-Use Solar Energy in New Jersey
2. Rule Proposal for the Dual-Use Pilot Program
 - Sections of the rule proposal: Summary, impacts and rule text
 - Scope, definitions, overall structure
 - Capacity targets and limits, eligibility, siting
 - Solicitation process, award conditions
 - Post-selection requirements: construction, operation, research, monitoring
 - Requirements for compliance, remediation, decommissioning, reporting, and recordkeeping
3. Discussion: Questions and Answers
 - Attendees are encouraged to use the Q&A function in Zoom.
 - Staff will answer questions in the second half of the meeting
4. Next Steps

Timeline and Milestones for Dual-Use Solar Energy

- Solar Act of 2012 gave BPU discretion to approve some solar projects on farmland. As a result, 200 MW of solar was installed, and the farmland for these projects was taken out of production.
- Solar Act of 2021 established two successor solar incentive programs: CSI for grid scale and net-metered projects greater than 5 MW, and ADI for net-metered projects less than 5 MW.
- But the 2021 Solar Act did not specifically address dual-use solar.

Solar Activity Reports

208,129

Solar Installations



As of October 2024, over
208,129 New Jersey homes &
businesses have installed a
solar electric system.



<https://www.njcleanenergy.com/renewable-energy/project-activity-reports/project-activity-reports>

Timeline and Milestones for Dual-Use Solar Energy

- Dual-Use Solar Energy Act of 2021 required BPU to develop rules and regulations for a Dual-Use Solar Energy Pilot Program in New Jersey.
- Dual-use solar (also called agrivoltaics) means agricultural production and solar energy production that take place (i.e., co-location) on the same farmland.
- Dual-use solar can help New Jersey to meet clean energy goals while protecting farmland from development to non-agricultural uses.

Hay harvest at Rutgers
Snyder Farm, May 2024
Photo: RAP



Dual-Use Pilot Program: Milestones to date

4Q 2023

Nov. – Straw Proposal issued and stakeholder meeting held

- Nov. 29 stakeholder meeting attended by over 120 individuals from the agricultural community, state and local government, and academia

Dec. – Deadline for written comments from stakeholders on Straw Proposal

- 16 written comments received on behalf of 22 entities

1Q-2Q 2024

Jan. through May – Evaluation of stakeholder comments and development of the Preliminary Rule Draft

Jun. – Preliminary Rule Draft issued and written comments requested from stakeholders

- 18 written comments received on behalf of 25 entities

Dual-Use Pilot Program: Milestones cont.

3Q-4Q 2024

Jul. through Oct. – Development of the Rule Proposal, taking into account public comments on the Preliminary Rule Draft

Oct. 23 – Board Order issued establishing the Pilot Program (not discussing)

Dec. 2 – **Rule Proposal** issued

Dec. 17 – Informational session on the Rule Proposal (today)

60-day comment period for the Rule Proposal

1Q 2025

Jan. 31, 5:00 p.m. ET – Deadline for comments on the Rule Proposal

Thank you to everyone who attended a stakeholder meeting or submitted a written comment.

Participation from the public in the development of the Rule Proposal has helped to improve the proposed Pilot Program.

The Pilot Program: A Collaborative Effort

- Throughout the development of the Rule Proposal, BPU consulted with other state agencies, including NJDA and NJDEP.
- BPU also worked closely with the Rutgers Agrivoltaics Program (RAP). Under the Board's grant agreement with Rutgers University, RAP to serve as the primary designer & organizer of research studies for selected projects as part of the Pilot Program.
- BPU will continue to consult with these and other state partners to implement and evaluation the Pilot Program.



N.J.A.C. 14:8-13: Pilot Program Rule Proposal

- The Rule Proposal contains not just the actual text of the proposed rule, but also:
 - A Summary of key points and each section of the proposed rule
 - Impact Statements which describe the proposed rule's expected social impact, economic impact, and impact on jobs, the agriculture industry, housing affordability, smart growth, and other areas
 - The full text of the proposed rule starts on p. 2275 of the Rule Proposal.

PROPOSALS

3. Each physician assigned to perform medical clearance review for an event shall receive a fee of \$300.00.
(b) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Dual-Use Solar Energy Pilot Program

Proposed Amendments: N.J.A.C. 14:8-1.2 and 11.4

Proposed New Rules: N.J.A.C. 14:8-13

Authorized by: New Jersey Board of Public Utilities, Christine Gubli-Sadovy, President, Dr. Zsuzsanna Christodoulou, Ph.D. and Michael Ringer, Commissioners.

Authority: N.J.S.A. 48:3-87.13, 48:3-87, and 48:3-11.4 through 11.6

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: QX2408097.

Proposal Number: PRM 2024-117.

A virtual informational session concerning the notice of proposal will be held on December 17, 2024, at 10:00 A.M. Eastern Time. Information about the information session can be found on the New Jersey Board of Public Utilities' (Board) website at <https://www.nj.gov/bpu/propose.html>.

PUBLIC UTILITIES

Pilot Program Scope and Eligibility

In this rulemaking, the Board proposes amendments and new rules to comply with the statutory directive. At N.J.A.C. 14:8-13, the Board proposes rules to establish a three-year Pilot Program that seeks to demonstrate and study the compatibility of active agricultural or horticultural production and solar photovoltaic infrastructure on the same land or property. The Board's rules at N.J.A.C. 14:8-13 are both an existing definition for "dual-use" for solar projects that remains applicable for the Pilot Program. The term "dual-use" is defined as "the practice of using energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unimproved land used in agricultural or horticultural production that ensures the continued simultaneous use of the land below and adjacent to the panels for agricultural or horticultural production." The amendments and new rules propose to incorporate the statutory definition of "dual-use solar energy project" as proposed N.J.A.C. 14:8-13.2. The term "dual-use solar energy project" is defined as "the energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unimproved land used in agricultural or horticultural production that ensures the continued simultaneous use of the land below and adjacent to the panels for agricultural or horticultural use." N.J.S.A. 48:3-87.13 b.

The Dual-Use Act permits the Board to extend the Pilot Program to five or five years at the Board's discretion. N.J.S.A. 48:3-87.13 c. The Dual-Use Act directs the Board to establish annual capacity targets not to exceed a total of 250 megawatts (MW) over the first three years of the Pilot Program. N.J.S.A. 48:3-87.13 (d) and e. The Board may expand this initial capacity target by up to 20 MW per year for two additional



N.J.A.C. 14:8-13: Pilot Program Rule Proposal

- The Proposed Rule contains the following sections, which this presentation will cover in order:

14:8-13.1 Purpose and scope
14:8-13.2 Definitions
14:8-13.3 Pilot Program structure
14:8-13.4 Pilot Program capacity targets and limits
14:8-13.5 Pilot Program eligibility
14:8-13.6 Project siting requirements
14:8-13.7 Pilot Program solicitation process
14:8-13.8 Conditions for a project awarded an incentive
14:8-13.9 Installation, construction, and operational reqs.
14:8-13.10 Monitoring and research requirements
14:8-13.11 Compliance and remediation
14:8-13.12 Decommissioning procedures
14:8-13.13 Reporting and recordkeeping

13.1 Purpose and Scope; and 13.2 Definitions

13.1 Purpose and Scope: This subchapter sets forth the rules for the Dual-Use Solar Energy Pilot Program (“Pilot Program”), in accordance with the Dual-Use Solar Energy Act (“Act”)

13.2 Definitions

- Many terms used in the Rule Proposal are defined by prior legislation or rules. Examples include:
 - “Forested land” or “forestland”
 - “Prime agricultural soils”
- Key new terms defined by the Rule Proposal include:
 - “Agricultural practices”
 - “Research control area”
- No new major definitions were added to the Rule Proposal that were not included in the Straw Proposal

13.3 Pilot Program Structure

- The Act mandates:
 - The Pilot Program will last 3 years (36 months), with the possible extension of 2 additional 12-month periods.
 - Rules for a permanent dual-use program will be adopted after the adoption of the Pilot Program rules.
- The Rule Proposal has determined that:
 - There will be an annual solicitation process.
 - Project teams must first submit an Expression of Interest (EOI), and then, following feedback from Board staff, a complete application.
 - As part of its application, a Project Team may propose an “adder”—an additional incentive to supplement that provided under the appropriate SuSI program (i.e., ADI or CSI).
 - Selected projects will be subject to monitoring and operational requirements, among other requirements, as specified in the rest of the Rule Proposal.

SCOPE, DEFINITIONS, OVERALL STRUCTURE

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- Staff will answer questions about the Rule Proposal in the second half of the meeting
- Attendees are encouraged to post their questions in the Q&A window at any time

13.4 Capacity Targets and Limits

- The Act mandates:
 - 200 MW total cap for 3 years
 - Additional 50 MW cap for each of two possible additional 12-month periods, if needed
- The Rule Proposal has determined that:
 - Each 12-month Program Year will have an associated annual capacity target, to be determined by the Board.
 - The Board may establish capacity set-asides within the annual capacity targets for particular types of projects, with the intent of studying a diverse pool of projects in the Pilot Program.

13.5 Program Eligibility

- The Act mandates:
 - 10 MW maximum cap for each individual project size
 - Criteria for evaluating and scoring proposed projects. Criteria mandated by the Act include, but are not limited to:
 - Proposals for monitoring the quality of agricultural or horticultural use of the land
 - Incentive level sought by the applicant
 - Geographic location
 - Interconnection planning
 - Quality of research proposed for the project
 - For a complete list of Act-mandated criteria, see N.J.S.A. 48:3-87.13(c)(1)(a-k)
 - The Board shall consult with NJDA in evaluating proposed dual-use projects
 - Additional criteria for evaluating projects may be established by the Board, in consultation with NJDA

13.5 Program Eligibility

- The Rule Proposal has determined that:
 - Selection criteria and minimum project size will be set by the Board before each solicitation window.
 - In order to be considered for approval by the Board, dual-use project teams must first submit an Expression of Interest (EOI), receive pre-qualification to submit an application, and then submit an application.
 - ADI and CSI facilities, established under N.J.A.C. 14:8-11, that have not yet commenced operation (i.e., received permission to operate), are eligible to participate in the Pilot Program.
 - Additional conditions exist for ADI and CSI-eligible facilities to participate in the Pilot Program.
 - Community Solar facilities are not eligible to participate in the Pilot Program.
 - Electric Distribution Companies (EDCs) are not eligible to participate in the Pilot Program.

13.6 Siting Requirements

- The Act mandates:
 - Dual-use projects must be located on unpreserved farmland (as valued, assessed, and taxed under NJ's Farmland Assessment Act).
 - Land included in a dual-use project must remain in “active agricultural or horticultural use.”
 - Dual-use projects are prohibited from locating on prime agricultural soils or soils of statewide importance in an ADA, unless undertaken in association with a research study in coordination with a New Jersey institution of higher education.
 - Dual-use projects are prohibited on the following land types, unless a waiver is granted by the Board:
 - Land in the Pinelands Preservation Area, or land designated as forest land in a Pinelands Comprehensive Management Plan
 - Freshwater or Coastal Wetlands
 - Land in the Highlands Preservation Area



13.6 Siting Requirements

- The Rule Proposal has determined that:
 - Land proposed for a dual-use project must have been in continuous agricultural or horticultural use for 3 years under the State's farmland assessment program.
 - In order to be consistent with the Solar Act of 2021 and the CSI Siting Rules at N.J.A.C. 14:8-12, dual-use projects are prohibited on two additional land types, namely Green Acres Program lands and forested lands and associated transition zones, unless a waiver is granted by the Board, in consultation with NJDEP and NJDA.
 - Dual-use projects applying as CSI projects are not subject to the 2.5% statewide and 5% county development caps under CSI.

CAPACITY TARGETS, ELIGIBILITY, SITING

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- Attendees are encouraged to post their questions in the Q&A window at any time

13.7 Solicitation Process

- The Act mandates:
 - The application process will utilize a set of pre-selected criteria by which applications are to be evaluated and scored by the Board, in consultation with NJDA.
 - The Board has 180 days to make decisions on applications.
- The Rule Proposal has determined that
 - Each solicitation round will begin with a Board order and a Notice of Incentive Availability (NOIA) that will specify a capacity target and criteria by which applications are to be judged.
 - Criteria for evaluating applications may include (but are not limited to): quality of the plan for continued agricultural or horticultural use; incentive level sought; interconnection planning status; and proposals to mitigate negative impacts on farmland during construction.

13.7 Solicitation Process

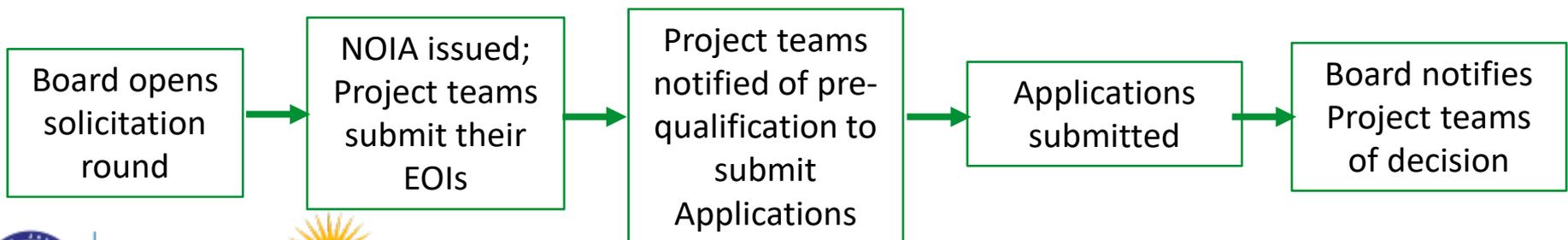
Continued...

- The Rule Proposal has determined that:
 - An Expression of Interest (EOI) will be required of each project team. The EOI shall identify basic characteristics of the project, including location, capacity, land area, description of past agricultural use, and proposed continued agricultural use.
 - Related to costs, the EOI shall also estimate:
 - Anticipated construction schedule, including cost milestones
 - Total installed cost including solar equipment, research required pursuant to the Pilot Program rules, monitoring and data collection equipment, labor, and soft costs
 - The “adder” required for incremental costs
 - Incremental costs, as a subset of installed costs, as a result of participation in the Pilot Program, specific to agricultural or horticultural aspects of the Pilot Project

13.7 Solicitation Process

Continued...

- The Rule Proposal has determined that:
 - Board Staff will provide feedback on EOIs and inform applicants whether they are pre-qualified to submit an Application.
 - Applications will build on the EOI, describing in detail the project design and specifying how the project will meet criteria established by the Board
 - The Board will consult with the Secretary of Agriculture and issue its decision for each project (i.e., approve, disapprove, or approve with conditions) within 180 days after receipt of the application.
 - To sum up, the solicitation process will follow this sequence:



13.7 Solicitation Process

Continued...

- The Rule Proposal has determined that:
 - Key elements of application materials for a selected project shall form the basis for that project's Construction, Operations, Monitoring, and Project Research Plan ("COMPR"). A COMPR will serve as a main recordkeeping document for dual-use projects under the Pilot Program, as described at 13.13.

Agrivoltaics in Colorado
Photo: Colorado State University



13.8 Incentive/Award Conditions

- The Act mandates:
 - Financial incentives for pilot projects to be established by the Board.
 - Criteria for evaluating applications shall take into account the incentive sought by an applicant.
- The Rule Proposal has determined that:
 - Project teams may propose an “adder” based on estimates of incremental costs incurred by their project.
 - For each project, retention of the financial incentive depends in part on annual demonstration of continued use of the land for agricultural or horticultural production.
 - A soil quality report must be prepared within 90 days of selection.
 - The Board has the authority to seek rescission of incentives and require decommissioning.

SOLICITATION PROCESS, INCENTIVE/AWARD CONDITIONS



- Reminder: Staff will answer questions about the Rule Proposal in the second half of the meeting
- Attendees are encouraged to post their questions in the Q&A window at any time

13.9 Installation, Construction & Operational Reqs.

- The Act mandates:
 - Projects shall comply with all applicable federal, State, and local laws, rules, regulations, or ordinances.
 - Selected projects shall be a “permitted use” within every municipality.
 - Land on which dual-use projects are located continues to be devoted to active agricultural or horticultural use.
- The Rule Proposal has:
 - Clarified the applicability of the Right to Farm Act.
 - Determined that selected projects must conform with all applicable codes, standards, etc.
 - Clarified requirements for fencing under the National Electrical Code.
 - Prohibited dual-use system designs that incorporate permanent agricultural structures or use concrete in structural footings.

13.9 Installation, Construction & Operational Reqs.

Continued...

- The Rule Proposal has:
 - Clarified requirements for the research control area. The Rule Proposal now states that:

Projects with array-covered areas less than or equal to 3.0 acres require equal-sized array-covered and research control areas, meaning that no more than one-half of the dedicated land at a location can be covered with solar arrays.

Projects with array-covered areas greater than 3.0 acres require a research control area of at least 3.0 acres. N.J.A.C. 14:8-13.9(e)(5)

- Determined that selected projects shall include a 3-year plan for farming operations in their COMPR. Project teams must plan for ways to minimize impacts on soil, ensure animal safety, etc.
- Determined that selected projects must comply with timelines for construction and operation required (as applicable) by ADI or CSI.

13.10 Monitoring & Research

- The Act mandates:
 - Research studies on the results (crop performance, etc.) of the Pilot Program are needed to inform the design of a Permanent Program.
 - Projects on prime agricultural soils and soils of Statewide importance located in ADAs must incorporate a research study in coordination with a New Jersey public institution of higher education.
 - The quality of planned research shall be included in the criteria used for project selection during application periods.

Agrivoltaics at Rutgers
RAREC, August 2024
Photo: RAP



13.10 Monitoring & Research

- The Rule Proposal has determined that:
 - Some data collection is required for all selected dual-use projects. This includes data on crops planted, harvest dates, yields, animals grazed, etc.
 - Data collection requirements are greater for projects on prime agricultural soils or soils of Statewide importance that are located in ADAs.
 - Management and collection of data listed in N.J.A.C. 14:8-13.10 by the Board or its designee, for the first three years of a project, will be at no cost to the participant. Participants may choose to contract with a non-Board appointed entity to collect the data at their own cost.

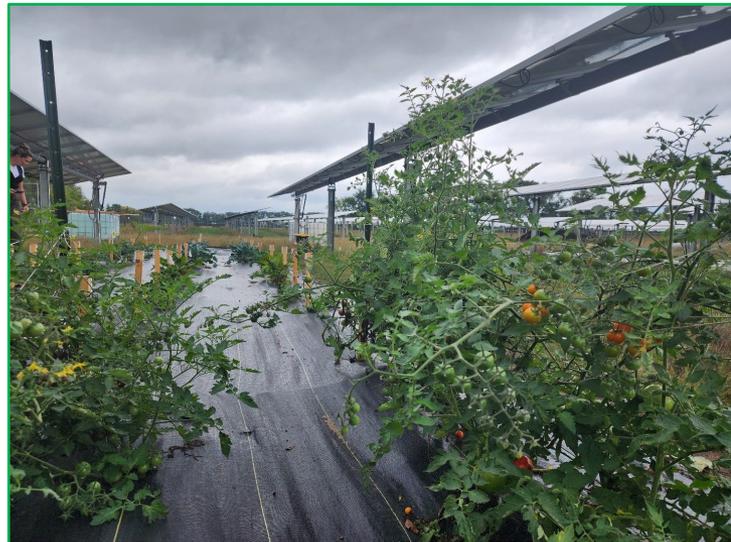
13.11 Compliance & Remediation

- The Act mandates:
 - NJDA can request to revoke or suspend a project approval for a violation of its terms and conditions.
- N.J.A.C. 14:8-13.11 “Compliance and remediation”—part of the Rule Proposal—implements the procedure for suspending and revoking an approval of a selected project in the Pilot Program and sets forth compliance and enforcement provisions.
 - Proposed enforcement provisions are not intended to penalize good faith efforts to install and operate Dual-Use facilities.
 - Enforcement provisions are aimed at preventing the receipt of Pilot Program revenues by solar projects on farmland that is no longer in active agricultural or horticultural use.

13.11 Compliance & Remediation

- The Rule Proposal has determined that:
 - The Board may exercise discretion in the case of *force majeure*.
 - The Board will work with the NJDA to audit compliance with the terms of the Pilot Program.
 - The Board will work with farmers and project developers to remedy any non-compliance.
 - Compliance and enforcement procedures will be pursued in tandem with NJDA, including revocation of the agrivoltaics adder.

Big River Farms in Minnesota
Photo: AgriSolar Clearinghouse



13.12 Decommissioning

- The Act mandates:
 - Provisions for decommissioning shall be part of the Pilot Program, in part to minimize negative impacts on farmland from Dual-Use projects
 - Plans for decommissioning shall be a criterion used in the evaluation of project applications to the Pilot Program.
- The Rule Proposal has determined that:
 - Decommissioning requirements will be similar to those required in CSI.
 - Additional decommissioning procedures can be established by the Board, if needed to inform a Permanent Program.

13.13 Reporting & Recordkeeping

- The Rule Proposal has determined that:
 - The COMPR derived from a project's application to the Pilot Program shall form the basis for the primary reporting and recordkeeping tool for the life of the project.
 - Approved projects must submit annual progress reports. The COMPR—which describes baseline environmental and agricultural conditions, design plans, and agricultural plans, for the duration of the Pilot Program—will be used as the base for the annual reports.

Agrivoltaics at Rutgers
Cook Farm, August 2024
Photo: RAP



13.13 Reporting & Recordkeeping

Continued...

- The Rule Proposal has determined that:
 - The Board reserves the authority to require reporting requirements for EDCs, and may establish requirements by Board order based on the needs of the Pilot Program.
 - Change in project ownership must be reported to the Board.
 - COMPRs and associated records must be retained by projects for 15 years (the standard term for a SREC-II award)
 - Application materials and COMPRs for selected projects will be docketed by the Board, i.e., assigned a BPU docket number for recordkeeping purposes. These materials may also be published on its website.

1. Please use the raise hand function
2. State your name and organization, if applicable
3. Limit questions to 1-2 minutes

Q&A SESSION

- Questions on any part of the Rule Proposal are welcome.
- Staff cannot make any statements about the Rule Proposal in advance of the close of the comment period or Board approval of adoption.

Next Steps

- Written comments due by 5:00 p.m. on Friday, January 31, 2025
- Access the Notice of Rule Proposal [here](#).
- Submit electronically:
 - Using the “Post Comments” button on the Board’s Public Document Search tool; or
 - Email: Board.Secretary@bpu.nj.gov
 - PDF or Word format or
 - Include a subject line of “Dual-Use Pilot Program Rule Proposal Comments”

Next Steps

- Comments will be considered “*government documents*” for purposes of the State’s Open Public Records Act (OPRA).
- Stakeholders may identify information that they wish to keep confidential by submitting them in accordance with the confidentiality procedures set forth in N.J.A.C. 14:1-12.3 and the OPRA, N.J.S.A. 47:1A-1 et seq.



*Photo: U.S. Department of Agriculture,
<https://www.climatehubs.usda.gov/hubs/northeast/topic/agrivoltaics-coming-soon-farm-near-you>*

THANK YOU!

NJBPU: <https://www.nj.gov/bpu/agenda/rules>

NJ's Clean Energy Program – Dual-Use Pilot Program:

<https://www.njcleanenergy.com/renewable-energy/programs/dual-use-solar-pilot-program>