

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 Guhl-Sadovy, President; Dr. Zenon Christodoulou, Ph.D. and Michael Bange, Commissioners.

Authority: N.J.S.A. 48:3-87.13, 48:3-87, and 48:3-114 through 119.

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

BPU Docket Number: QX24080597.

Proposal Number: PRN 2024-137.

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/newsroom/public/>. The deadline for comments on this matter is 5:00 P.M. Eastern Time on January 31, 2025. Please submit comments directly by using the Board's Public Document Search tool, search for the specific docket listed above, and post by utilizing the "Post Comments" button. Written comments may also be submitted. Please include subject matter and docket number and submit by January 31, 2025, to:

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Secretary of the Board  
New Jersey Board of Public Utilities  
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Attn: BPU Docket No. QX24080597  
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All comments are considered "government records" for purposes of the State's Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth at N.J.A.C. 14:1-12.3.

The agency proposal is as follows:

#### Summary

The New Jersey Board of Public Utilities (Board) is proposing to amend its existing solar energy rules to establish the Dual-Use Solar Energy Pilot Program (Pilot Program) and to integrate it with the larger Successor Solar Incentive (SuSI) Program set forth at N.J.A.C. 14:8-11. This rulemaking is designed to bring the Board's rules into compliance with P.L. 2021, c. 170 (the "Dual-Use Solar Energy Act," "Dual-Use Act," or "Act"). The Pilot Program is designed to incorporate dual-use solar facilities, also known as agrivoltaics, and provide incentives within the SuSI Program, which serves as the permanent program for providing solar incentives to qualified solar electric generation facilities.

The Dual-Use Act, signed by Governor Murphy on July 9, 2021, directs the Board to establish a program to "permit the construction, installation, and operation of dual-use solar energy projects that are connected to the distribution or transmission system owned or operated by a New Jersey public utility or local government unit and located on unreserved farmland, while maintaining the affected land in active agricultural or horticultural use." N.J.S.A. 48:3-87.13.a. Specifically, the Dual-Use Act directs the Board to create a Pilot Program and to later convert it to a permanent program. N.J.S.A. 48:3-87.13.g.

#### Pilot Program Size and Timeframes

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. 14:8-1.2 set forth 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 siting energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unreserved farmland 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" at 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 unreserved farmland 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.h.

The Dual-Use Act permits the Board to extend the Pilot Program to four or five years at the Board's discretion. N.J.S.A. 48:3-87.13.e. The Dual-Use Act directs the Board to establish annual capacity targets not to exceed a total of 200 megawatts (MW) over the first three years of the Pilot Program. N.J.S.A. 48:3-87.13.b(2) and e. The Board may expand this initial capacity target by up to 50 MW per year for two additional years. N.J.S.A. 48:3-87.13.e. The proposed rules establish standards and an application process for solar energy projects to participate in the Pilot Program. The proposed rules establish the specifics of the Pilot Program design, including eligibility provisions; registration processes; requirements for siting, installation, and decommissioning; research and monitoring requirements; enforcement and remediation provisions; and reporting and recordkeeping requirements. The Board further proposes amendments to the SuSI Program to integrate dual-use solar facilities from the Pilot Program within the existing construct of the SuSI Program.

The intention of the Pilot Program is to encourage the development of dual-use solar facilities and the creation of a new segment of the solar industry in New Jersey that is compatible with the State's rich agricultural heritage. Dual-use solar can provide farmers with an additional stream of revenue, contributing to farm financial viability and allowing for continued agricultural or horticultural production of land while increasing the production of clean energy. These projects will also create a substantial number of green economy jobs and further the State's efforts toward achieving its renewable energy goals.

#### Stakeholder Engagement

In developing the proposed rules for the Pilot Program, the Board has examined and drawn from the experiences of existing agrivoltaic solar programs in other states and countries, while crafting a program that reflects the goals and circumstances specific to New Jersey. Board staff engaged the Rutgers Agrivoltaics Program (RAP) at Rutgers University (RU) for providing crucial input into the design of the Pilot Program; on May 1, 2023, the Board approved and executed a three-year grant agreement with RAP to facilitate the development and implementation of the Pilot Program. Throughout 2023, and in close collaboration and consultation with the New Jersey Department of Agriculture (NJDA), the State Agriculture Development Committee (SADC), and the New Jersey Department of Environmental Protection (NJDEP) (collectively, "State Agencies") and other interested stakeholders, the Board conducted robust public engagement to gather input on the implementation of the Dual-Use Act.

On November 10, 2023, Board staff issued a straw proposal for public comment, with an updated version issued on November 21, 2023. On November 14, 2023, Board staff, in conjunction with RAP, presented an overview of the straw proposal at the New Jersey Farm Bureau's annual conference, with approximately 80 attendees, including stakeholders primarily from the agricultural community, academia, and Federal, State, and local government. On November 29, 2023, Board staff, the State

Agencies, and RAP held a stakeholder meeting with approximately 129 attendees, 14 of whom provided public comments during the meeting. Board staff also received 16 written comments on behalf of 22 entities. In response to stakeholder comments received on the straw proposal, Board staff issued a draft rulemaking on June 10, 2024, to obtain additional feedback from stakeholders, and received 18 written comments on behalf of 25 entities. Board staff, the State Agencies, and RAP evaluated the second round of comments and incorporated additional considerations provided by stakeholders into the proposed amendments and new rules. Thus, the proposed amendments and new rules for dual-use solar facilities draw upon industry standards and precedent within the framework of a New Jersey-specific program and existing New Jersey incentive programs.

#### *Pilot Program Structure*

The proposed amendments and new rules establish the Pilot Program structure to reflect a competitive application process that is consistent with the existing SuSI Program. Participants in the Pilot Program will be required to meet specific siting and other criteria and will be selected in a competitive evaluation and scoring process that takes into account the incentive level sought by the applicant. The proposed amendments and new rules organize the timing and structure of the Pilot Program into three categories:

- Program Year (PY), which has a duration of 12 months, starting from the effective date of the adoption of the proposed amendments and new rules, and encompasses at least three years, specifically PY1, PY2, and PY3;
- Solicitation round, which coincides with a Board order announcing an annual capacity target required by statute and encompasses the entire solicitation process concluding within one year from the date of the Board order; and
- Application period, which denotes the time during which applications may be submitted for consideration.

A solicitation round may include more than one application period, each with an associated application period capacity target. This approach gives the Board flexibility in determining any adjustments needed in response to meeting an annual capacity target. An application period will be provided by a Board announcement that will identify the opening and closing dates. Each solicitation round will have at least one application period.

#### *Project Evaluation and Selection*

The Pilot Program further establishes a two-step process by which potential projects will be reviewed: 1. a Notice of Incentive Availability (NOIA) that sets forth criteria for pre-qualification and submitting an expression of interest (EOI); and, if invited, through a determination of pre-qualification approval; and 2. a project's submission of a full application. The NOIA and pre-qualification/EOI component of the application process will enable Board staff, the State Agencies, and RAP to review the prospective project plans, including their research plans, and provide feedback to prospective applicants prior to an applicant's submission of a full application. Project proposals that receive pre-qualification approval for a particular application period will be encouraged to submit the application for that application period to participate in the Pilot Program.

A potential applicant's submission of an EOI to Board staff will not bind or commit that applicant's project to participate in such application period. However, an applicant's failure to submit an EOI will disqualify the project from participating in that application period. The selection criteria, including the weighing or scoring scheme, for applications will be approved by the Board prior to the opening of an application period within the solicitation round. Specifically, the Dual-Use Act, at N.J.S.A. 48:3-87.13.c(1), requires that the Board and NJDA consider specific criteria, such as proposals for monitoring the quality of agricultural or horticultural use of the land and geographic location, when selecting projects. These criteria are reflected in the proposed amendments and new rules with the additional considerations for project location in an "overburdened community" or "underserved community" and a three-year plan for the farming operation.

Projects submitted for participation in the Pilot Program will be scored based on the responses to these criteria. The Board reserves the authority

to require additional criteria, as appropriate, during a solicitation round, but prior to opening an application period, to meet the intent of the Dual-Use Act. The Board is not required to make awards if an application period or solicitation round results in project proposals that do not meet the selection criteria or is undersubscribed. The Board will also consider diverse types of agricultural and horticultural production, as well as a variety of project sizes.

#### *Incentives and Project Costs*

The Board is proposing that the existing SuSI Program, including the Administratively Determined Incentive (ADI) Program, the Competitive Solar Incentive (CSI) Program, and their associated New Jersey Solar Renewable Energy Certificate-IIs (SREC-IIs), serve as the primary source, or baseline, of an incentive or award for dual-use projects. Using the ADI Program and CSI Program rules, an individual project's proposed system size, jurisdiction for interconnection, and sale of electricity will determine which program a dual-use project may be eligible for. Dual-Use projects will receive SREC-II values pursuant to the ADI Program based on market segment or will receive the SREC-II values based on the awarded CSI projects in the CSI Program. In addition to the base level of incentive provided through the ADI Program or CSI Program, individual projects with costs that can be demonstrated to be higher than those experienced by similarly sized and sited projects may submit a proposed Dual-Use incentive adder request with their application. Applicants will be required to submit their desired incentive level on a dollar per solar-produced megawatt hour (\$/MWh) basis in their pre-application and will also be instructed on how to calculate and report their requested Dual-Use incentive adder. The amount an applicant requests must be justified by an itemization of the costs that make their project more expensive than comparable projects in the ADI Program or the CSI Program, specifically, those costs applicable to the agrivoltaic investment and Dual-Use pilot-related operational costs.

To support an efficient and streamlined approach for CSI Program-eligible projects applying for the Pilot Program, the Board is proposing one solicitation process for a Dual-Use Pilot Program award in the form of SREC-IIs that will cover requirements for both the Pilot Program and the CSI Program. The SREC-II price will be comprised of a proxy baseline value and the Dual-Use adder. In other words, a CSI-eligible applicant will not be required to obtain a winning bid in the CSI Program, but is required to provide a Dual-Use solicitation price estimate for SREC-IIs consisting of: 1. the highest awarded bid approved by the Board for the basic grid supply tranche (Tranche 1) from the most recent CSI Program solicitation; and 2. the Dual-Use adder level sought. CSI projects that already have an award from the Board may submit a portion of the project to the Pilot Program, up to 10 MW, if they have not yet received permission to operate (PTO) from an electric distribution company (EDC). In the ADI Program, a prospective Dual-Use pilot project that may be eligible for incentives equivalent to those provided in the ADI Program may apply for both programs simultaneously and need not wait for an approval to apply for the other program, as long as a project in the ADI Program has not yet received PTO from an EDC.

A subset of the ADI Program, the Community Solar Energy Program (CSEP), does not provide incentives for ground-mounted solar projects, projects located on farmland or open space, or any type of land currently envisioned as suitable locations for agrivoltaic projects. Thus, a Dual-Use pilot project will not be allowed to participate in the CSEP. Finally, given the legislative mandate pursuant to P.L. 2023, c. 190, that significantly modified the Board's existing Remote Net Metering (RNM) program, the Board is required to establish an application, an incentive, and an approval process to meet that mandate. The updated RNM program could be a potential pathway for Dual-Use pilot projects. However, that program remains under development at this time, so it is not specifically addressed in this rulemaking. The Board will consider whether any changes to the Dual-Use Pilot Program rules are needed to incorporate the RNM program when it adopts rules for the updated RNM program.

#### *Participation Terms, Conditions, and Enforcement*

In line with the SuSI Program, as well as past solar energy programs in New Jersey, a conditional letter of approval will be issued for projects selected to receive an award in the Pilot Program. This letter will outline the conditions a Dual-Use pilot project will be required to meet in order

to receive the incentive. The set of conditions may vary by size of the project, and the letter will define and clarify the enforcement of these commitments. The Board intends to utilize a comprehensive document, referred to as a Construction, Operations, Monitoring, and Project Research Plan (COMPR), to provide a record for an individual project, including the initial application, any terms or conditions specific to the project award, and any subsequent modifications requested, reviewed, and approved by Board staff and the State Agency team. The COMPR will document the expectations for project implementation, which will be evaluated for the purpose of informing the development of a permanent program.

The proposed amendments and new rules establish that any Pilot Program participant that does not maintain active agricultural or horticultural use of the land or does not comply with the other terms and conditions for participation in the Pilot Program may risk forfeiture of future Dual-Use incentive payments. Pursuant to the Dual-Use Act, one of the key requirements of the Dual-Use Solar Energy Pilot Program is that “the land on which the dual-use solar energy project is installed continues to be actively devoted to agricultural or horticultural use[.]” N.J.S.A. 48:3-87.13.b(6). The Dual-Use Act allows the Secretary of Agriculture to “request that the [B]oard suspend or revoke an approval issued pursuant to this section for a violation of any term or condition of the approval or any provision of this section.” N.J.S.A. 48:3-87.13.d. The proposed enforcement provisions are not intended to penalize good faith efforts to install and operate Dual-Use facilities, but are instead aimed at preventing the receipt of Pilot Program revenues from solar projects on farmland that is no longer in active agricultural or horticultural use. The Board will work with the NJDA to audit compliance with the terms of the Pilot Program and work with farmers and project developers to remedy any non-compliance.

Participants that violate a term or condition for participating in the Pilot Program will initially be informed that they are not meeting the requirements of the Pilot Program and will be provided with an opportunity to propose a remedy and cure their non-compliance. During a probationary period, any financial incentive will be held in escrow pending the participant’s successful resolution of the non-compliance. Should the participant fail to correct the non-compliance after the probationary period, the project may be terminated from the Pilot Program and the incentive for the Dual-Use project, or portion of the project, will be terminated. In extreme cases, including fraud or misrepresentation, the Board reserves the right to seek the return of any incentives paid to the project for a period of time to be determined by the Board. At that point, the developer may be required to decommission the project and return the land to its prior agricultural or horticultural usage. The Board is proposing to make exceptions to the enforcement strategy for force majeure, such as crop loss due to drought or extreme weather. The Board recognizes the cyclical and, sometimes, unpredictable nature of agricultural and horticultural production, as well as the fact that Dual-Use facilities are experimental in nature. Changes in Federal or State law do not constitute force majeure events.

#### *Siting and Permitting*

The proposed amendments and new rules establish siting requirements for Dual-Use projects based on the Dual-Use Act and the CSI Program, which implemented siting criteria pursuant to the Solar Act of 2021, N.J.S.A. 48:3-119. Dual-Use projects will be prohibited from being sited on wetlands, in the Pinelands preservation and designated forest areas, in the Highlands preservation area, on land preserved pursuant to NJDEP’s Green Acres Program, or on forested land and associated transition zones defined pursuant to NJDEP’s rules, unless the Board grants a waiver after consultation with the NJDEP, the Secretary of Agriculture, and other State Agencies, as applicable, such as the Pinelands Commission and the Highlands Council. A developer will be required to petition the Board for a waiver for the project to be sited in a prohibited area. The Board will only allow such a project to be sited on a prohibited land type if it deems the project to be in the public interest. N.J.S.A. 48:3-119.f. In no case are Dual-Use projects allowed to be sited on preserved farmland, as the Dual-Use Act provides authority for siting on unreserved farmland only, pursuant to N.J.S.A. 48:3-87.13.a. The authority for siting solar facilities on preserved farmland is the NJDA, specifically SADC; the implementing

rules are pursuant to N.J.A.C. 2:76-2A.12. For consistency with the CSI Program siting rules at N.J.A.C. 14:8-12.2, the Board is proposing that applicable definitions pursuant to the CSI Program siting rules be used for the Pilot Program.

In the adoption of the rules for siting CSI-eligible facilities at N.J.A.C. 14:8-12.4(d), the Board determined that Dual-Use solar projects, as long as they maintain active agricultural or horticultural use of the land, not be construed as subject to the limitations and restrictions set forth in the Solar Act of 2021 specific to siting solar facilities on “prime agricultural soils or soils of Statewide importance, as identified by the United States Department of Agriculture’s Natural Resources Conservation Service, which are located in Agricultural Development Areas [ADAs] certified by the State Agricultural Development Committee.” N.J.S.A. 48:3-119.d(1). To further protect these soils, the proposed amendments and new rules incorporate the mandate from the Dual-Use Act to prohibit siting Dual-Use projects on prime agricultural soils and soils of Statewide importance located in ADAs, unless the project is in association with a research study undertaken in coordination with a New Jersey public research institution of higher education, as approved by the Board in consultation with the Secretary of Agriculture. N.J.S.A. 48:3-87.13.b(4). Similar to the rationale for consistency described for other siting prohibitions for the CSI Program, the Board is proposing to apply the definition of “covered agricultural land” in the Pilot Program. For simplicity, in describing requirements for the Pilot Program in this Summary that will apply to protect these soils, the term “covered agricultural land” is utilized.

#### *Research and Monitoring*

The proposed amendments and new rules set minimum standards for conducting required research studies that will apply to all projects participating in the Pilot Program, regardless of their size and location. The Dual-Use Act requires that the results of the Pilot Program, including any research results on the efficacy of Dual-Use in New Jersey, will be used to set future standards for Dual-Use solar energy projects in a permanent program. An objective means of evaluating the impact of solar construction, maintenance, and operations as directed pursuant to the Dual-Use Act is necessary. As discussed earlier in the Summary, the Board entered into a grant agreement with RAP to serve as the primary designer and organizer of research studies involving projects selected as part of the Pilot Program. These studies will evaluate topics, such as the impact of solar energy generation on crop types and yields, growing conditions, soil health, optimal solar panel installations and orientations, the economic feasibility of agricultural or horticultural operations affected by Dual-Use solar facilities, and other topics that the Board, a public research institution of higher education, and the State Agencies determine to be relevant. The proposed amendments and new rules establish certain requirements applicable to all Dual-Use projects, and more extensive requirements for projects located on covered agricultural lands, in light of the higher agricultural value placed on these lands. These requirements will be part of the Dual-Use COMPR addressing project monitoring, data collection, and research requirements.

The Act provides criteria for consideration in project selection, with the intent that Dual-Use projects selected by the Board to participate in the Pilot Program provide research results that can inform a permanent Dual-Use program as part of the SuSI Program. N.J.S.A. 48:3-87.13.g. The Dual-Use Act consistently places great emphasis on the role of research and evaluation in the development of standards for Dual-Use solar energy projects in a permanent program. The overall goal of the research is to provide accurate estimates of farm productivity with and without agrivoltaic arrays installed. In order to do so in a non-biased and scientific manner, the proposed amendments and new rules require that each approved project generate paired agricultural production data from an agrivoltaic array-covered area and a non-array-covered area, or research control area, from the same farm. Both members of the pair will have the same crop and will be farmed by the same operator using the same methods. For solar array projects of three acres or less, the research control area must be equal in size to the entire area of land containing the solar array, including the areas between the rows of panels. For solar array projects greater than three acres, the required control area size is no less than three acres. A research control area is a fundamental component of all agricultural field trials, providing a rigorous experimental design that

enhances the reliability, validity, and interpretability of the results. The reasons for the necessity of a control include, but are not limited to:

- Providing a baseline against which the effects of the experimental treatment, that is, the solar array, can be measured and attributed to the treatment itself, rather than other factors;
- Accounting for unexplained variability and ensuring that differences observed in the treatment area are caused by the treatment;
- Establishing statistical validity of results;
- Establishing a cause-and-effect relationship between the treatment and observed outcomes;
- Assisting in the interpretation of results with a better understanding of the variability in the system; and
- Helping to eliminate bias in the evaluation of treatment effects.

As the Board has provided for a 60-day comment period on this notice of proposal, the proposed notice is excepted from the rulemaking calendar requirement set forth at N.J.A.C. 1:30-3.3(a)5.

The following is a section-by-section summary of the proposed amendments and new rules:

At N.J.A.C. 14:8-1.2, the Board proposes new definitions, general to the chapter, for the following terms: “adder,” “Dual-Use Solar Energy Project,” and “Dual-Use Solar Energy Pilot Program” or “Pilot Program.”

At proposed new N.J.A.C. 14:8-11.4(l) and (m), the Board proposes eligibility requirements specifically addressing the Pilot Program pertaining to incentives pursuant to the SuSI Program.

At N.J.A.C. 14:8-13, the Board proposes to set forth rules for the establishment of the Pilot Program.

At N.J.A.C. 14:8-3.1, the Board proposes to set forth a purpose and scope for the subchapter.

At N.J.A.C. 14:8-13.2, the Board proposes new definitions, specific to the subchapter, for the Pilot Program as follows: “‘agricultural development area’ or ‘ADA,’” “‘agricultural practices,’” “‘application period,’” “‘Board,’” “‘capacity’ or ‘nameplate capacity,’” “‘Construction, Operations, Monitoring, and Project Research Plan’ or ‘COMPR,’” “‘covered agricultural land,’” “‘Dual-Use Solar Energy Pilot Program award,’” “‘equity,’” “‘Expression of interest’ or ‘EOI,’” “‘farmer,’” “‘force majeure,’” “‘forested land’ or ‘forestland,’” “‘horticultural practices,’” “‘landowner,’” “‘NJDA,’” “‘NJDEP,’” “‘New Jersey public research institution of higher education,’” “‘non-permanent agricultural structure,’” “‘Notice of Incentive Availability’ or ‘NOIA,’” “‘overburdened community,’” “‘permanent agricultural structure,’” “‘preserved farmland,’” “‘prime agricultural soils,’” “‘Program Year’ or ‘PY,’” “‘project site,’” “‘research control area,’” “‘SADC’ or ‘Committee,’” “‘selected project,’” “‘selected project team,’” “‘Soils of Statewide importance,’” “‘solar operator,’” “‘solicitation round,’” “‘transition zone,’” “‘underserved communities,’” “‘unpreserved farmland,’” and “‘wetlands.’”

At N.J.A.C. 14:8-13.3, the Board proposes the structure of the Pilot Program and the flow of the solicitation process for projects seeking to participate in the Pilot Program. The Board proposes a scored competitive application process as the mechanism for project selection in the Pilot Program as required pursuant to the Dual-Use Act. Pursuant to proposed subsection (m), the aggregated results from all application periods, the selected projects’ compliance with the Pilot Program’s terms and conditions, and the research results from such projects would inform the Board’s development of a permanent dual-use solar energy program.

At N.J.A.C. 14:8-13.4, the Board proposes to establish the capacity targets and limits of the Pilot Program.

At N.J.A.C. 14:8-13.5, the Board proposes eligibility criteria for the Pilot Program, including capacity limits for individual projects and major steps of the application process.

At N.J.A.C. 14:8-13.6, the Board proposes siting limitations and waiver conditions for Dual-Use projects in the Pilot Program.

At N.J.A.C. 14:8-13.7, the Board proposes the details and requirements of the solicitation process for the Pilot Program, which includes Board staff’s issuance of an NOIA for one or more application periods and application evaluation criteria.

At N.J.A.C. 14:8-13.8, the Board proposes the Pilot Program registration process, and a set of conditions projects selected into the Pilot Program must meet to receive incentives.

At N.J.A.C. 14:8-13.9, the Board proposes requirements for the installation, construction, and operation of Dual-Use projects approved to participate in the Pilot Program.

At N.J.A.C. 14:8-13.10, the Board proposes monitoring and research requirements for all Dual-Use facilities accepted into the Pilot Program, including more rigorous requirements for projects located on covered agricultural lands.

At N.J.A.C. 14:8-13.11, the Board proposes provisions for compliance with the terms and conditions of an applicant receiving an award pursuant to the Pilot Program, including an enforcement process by which a solar incentive may be withheld and/or revoked for violating program requirements. Additionally, the Board proposes that the NJDA may request the Board to suspend or revoke an approval issued pursuant to the proposed rules for a violation of the program requirements, unless caused by force majeure.

At N.J.A.C. 14:8-13.12, the Board proposes decommissioning procedures for Dual-Use projects, including flexibility for the Board to require additional procedures deemed necessary to inform a permanent program.

At N.J.A.C. 14:8-13.13, the Board proposes requirements for reporting and recordkeeping applicable to the individual Dual-Use projects and procedures for modifying any provision of individual Dual-Use projects.

#### Social Impact

The proposed amendments and new rules are expected to have a positive social impact on New Jersey by promoting the complementary legislative goals of the Clean Energy Act of 2018, N.J.S.A. 48:3-87.8 et seq., and the Solar Act of 2021, of encouraging the continued efficient and orderly development of solar energy generation in the State and promoting the investment of new solar facilities at the least cost of solar incentives to ratepayers while protecting farmland and other sensitive environmental resources. The Dual-Use Act builds upon and furthers these goals by focusing on solar development located on unpreserved farmland in a way that supports both New Jersey’s agricultural production and the State’s clean energy goals. Pursuant to the Dual-Use Act, the Pilot Program is to procure a maximum of 200 megawatts of new, clean energy from solar generation for New Jersey consumers over a period of three years, or 36 months. The increase in local solar generation is expected to reduce electricity generation from fossil fuel combustion, resulting in reduced emission of greenhouse gases, particulate matter, and sulfur and nitrous oxide compounds, all of which have demonstrated negative impacts on human health and biodiversity. These reductions improve health outcomes for New Jersey residents. The Board anticipates that the Pilot Program proposed in this rulemaking will build on the successes of the underlying SuSI Program. Further, by specifically promoting solar development that is compatible with agricultural production, the proposed Dual-Use Pilot Program will further help protect against the loss of prime farmland to solar development and will support farm viability in New Jersey by making an additional source of revenue available to farmers. In addition, the Pilot Program is expected to have a positive social impact by providing the data needed to inform the development of a successful permanent agrivoltaic program in New Jersey that best advances the twin goals of continuing to grow local clean energy generation and supporting a thriving agricultural community.

#### Economic Impact

The proposed amendments and new rules will provide for the expansion of a limited, but growing, market for the development of agrivoltaic solar projects. The Pilot Program incentivizes agrivoltaic projects by offering additional financial benefits pursuant to the SuSI Program in the form of an SREC-II adder to cover project-specific costs. The Pilot Program will help remove barriers to participation in solar energy and allow the agricultural community to participate in the advantages of solar energy in areas where it may not have been possible to do so without abandoning active farming on unpreserved farmland.

The proposed Pilot Program will promote clean electricity generation, free of harmful emissions that lead to negative human and ecological health impacts in New Jersey. The positive health effects and mitigation of climate change impacts resulting from an increase in emissions-free electric generation can lower healthcare costs by decreasing the number of adverse health outcomes associated with poor air quality, such as

asthma and heart emergencies. The Pilot Program is expected to contribute to continued employment of the more than 6,500 New Jersey employees who currently work in solar-related jobs and expand the growth of solar-related employment. The Board anticipates that continued investment in solar electricity generating capacity will leverage private investment and stimulate additional indirect economic benefits through local jobs, supply chain benefits, and services. In addition, the Board anticipates that the Pilot Program will have a positive economic impact on the agricultural sector by providing an additional source of revenue for farmers who participate in the program.

The costs associated with the Pilot Program are in the form of performance-based incentives for developers based on megawatt hours of production. The funds to provide these incentives are collected on a prorated basis spread among all New Jersey electricity ratepayers, as mandated by the Clean Energy Act.

**Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. This rulemaking has no Federal analogue and is not promulgated pursuant to the authority of, or in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the proposed amendments and new rules.

**Jobs Impact**

This rulemaking is designed to promote the continued vigorous development of the solar energy market in New Jersey by establishing a program that opens the agrivoltaic market for the first time in New Jersey. The proposed amendments and new rules are designed to operate within the existing solar incentive program and, thus, contribute to the associated impacts on jobs in the development, construction, and operation of solar facilities. This rulemaking is anticipated to result in job retention and potential job growth in the solar development sector of the economy. Moreover, all systems over one MW in size, including those in the Pilot Program, will continue to be subject to New Jersey’s prevailing wage statute at Section 1 of P.L. 2009, c. 89 (N.J.S.A. 48:2-29.47). In addition, by providing another revenue stream for farmers and supporting farm viability, the program has the potential to support job retention and potential job growth in the agricultural sector as well.

**Agriculture Industry Impact**

Any agrivoltaic program has the potential to have significant negative and positive impacts on the agriculture industry. The Board has, therefore, in close consultation with the Secretary of Agriculture and the SADC, built protections into the Pilot Program intended to reduce, minimize, and mitigate potential negative impacts to unreserved farmland while providing benefits from the program to the agriculture industry as discussed in the Social, Jobs, and Economic Impact statements. Pursuant to the Dual-Use Act, the Pilot Program consists of a competitive application process by which specific criteria must be considered by the Board and the NJDA in reviewing and selecting participants. Among these criteria include applicants’ proposals for monitoring the quality of the agricultural or horticultural use of the land, minimizing negative impacts to farmland, decommissioning, and stormwater runoff and other environmental issues. The Board proposes that any Pilot Program participant that does not maintain active agricultural or horticultural use of the land may risk forfeiture of future Dual-Use incentive payments. The proposed enforcement provisions are not intended to penalize good faith efforts to install and operate Dual-Use facilities but are instead aimed at ensuring that farmland participating in the program remains in active agricultural or horticultural use. To further protect New Jersey’s most valuable agricultural lands, the Pilot Program incorporates the Dual-Use Act mandate that Dual-Use facilities are prohibited from being located on prime agricultural soils and soils of Statewide importance, as identified by the United States Department of Agriculture’s Natural Resources Conservation Service, which are in ADAs, unless the project is in association with a research study undertaken in coordination with a New

Jersey public research institution of higher education as approved by the Board in consultation with the NJDA.

The Pilot Program’s design also reflects the statutory mandate to consider diversity of agricultural and horticultural productivity and project size when reviewing applications to inform setting provisions pursuant to a permanent Dual-Use program to protect the State’s agricultural and horticultural diversity. As Dual-Use projects are selected for participation in the Pilot Program, the application evaluation criteria will be adjusted to seek greater diversity in agricultural and horticultural use and project size. To address equity in the Pilot Program in a way that supports a clean energy economy throughout New Jersey and aligns both the State’s environmental justice goals and the Federal government’s equity initiatives, the Board is proposing criteria beyond those specifically described in the statute. Specifically, the Board is proposing to review potential project locations for their proximity to overburdened communities and underserved communities, as well as a project’s plan for outreach and engagement with the potentially impacted communities.

The Board anticipates that the design of the Pilot Program, along with the research being performed by the Rutgers Agrivoltaics Program, will provide the data needed to allow the Board to develop parameters for a permanent agrivoltaics program, as directed by the Dual-Use Act, that supports New Jersey farmers and the robust agricultural and horticultural production that has made New Jersey the Garden State, as well as the State’s clean energy goals.

**Regulatory Flexibility Statement**

This rulemaking will not impose any mandatory recordkeeping, reporting, or other compliance requirements on small businesses as the proposed Pilot Program is voluntary. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. Regarding businesses that qualify as small businesses pursuant to the Act, the SuSI Program, including the proposed Pilot Program, is a voluntary program and, as such, will not impose any requirements on any small business that chooses not to voluntarily participate in the program.

**Housing Affordability Impact Analysis**

This rulemaking will not impact the affordability of housing in New Jersey, nor will it have an impact on the average cost of housing. This rulemaking only addresses a solar energy program and will not directly affect housing prices or the housing market.

**Smart Growth Development Impact Analysis**

This rulemaking will not impact smart growth development in New Jersey. This rulemaking will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey. The scope of the rulemaking is limited to establishing a solar energy program in New Jersey.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

This rulemaking will not have an impact on pretrial, detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS

14:8-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1, 14:4-1.2, and 14:8-2.2.

**“Adder” means an additional financial incentive on top of a base incentive provided as a SREC-II within the Successor Solar Incentive (SuSI) Program at N.J.A.C. 14:8-11.**

**“Dual-Use Solar Energy Pilot Program” or “Pilot Program” refers to the program established at N.J.A.C. 14:8-13.**

“Dual-Use Solar Energy Project” means the energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unpreserved farmland 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.

#### SUBCHAPTER 11. SUCCESSOR SOLAR INCENTIVE PROGRAM

##### 14:8-11.4 Successor Solar Incentive Program eligibility

(a)-(k) (No change.)

(l) Dual-Use Solar Energy Projects approved by the Board for ADI Program incentives as described at N.J.A.C. 14:8-13 shall be eligible for an ADI Program incentive in the relevant market segment if not directed to participate in the CSI Program. A Dual-Use Solar Energy Project may be awarded a Pilot Program incentive adder.

(m) Dual-Use Solar Energy Projects approved by the Board for CSI Program incentives may be awarded a Pilot Program incentive adder.

#### SUBCHAPTER 13. DUAL-USE SOLAR ENERGY PILOT PROGRAM

##### 14:8-13.1 Purpose and scope

This subchapter sets forth the rules for the establishment of a Dual-Use Solar Energy Pilot Program, in accordance with N.J.S.A. 48:3-87.13.

##### 14:8-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Agricultural development area” or “ADA” has the same meaning as set forth at N.J.A.C. 14:8-12.2.

“Agricultural practices” means practices used to produce field crops, fruits and vegetables, specialty crops, forage crops, and aquaculture, as well as animal production.

“Application period” means the time during which applications will be received for review in advance of a project’s participation as a selected project in the Dual-Use Solar Energy Pilot Program. The period will commence upon an opening date and close on a subsequent date and time, each specified by Board staff in a Notice of Incentive Availability.

“Board” has the same meaning as set forth at N.J.A.C. 14:3-1.1.

“Capacity” or “nameplate capacity” means the maximum rated output in megawatts, measured in direct current (DC), of all individual photovoltaic panels physically interconnected to make up a solar array.

“Construction, Operations, Monitoring, and Project Research Plan” or “COMPR” means the document or sets of documents filed with the Board Secretary’s Office describing key elements of a selected project.

“Covered agricultural land” means all land containing prime agricultural soils or soils of Statewide importance, as identified by the United States Department of Agriculture’s Natural Resources Conservation Service, located within an individual county’s designated agricultural development area, as determined by the Committee.

“Dual-Use Solar Energy Pilot Program award” means the Board-approved conveyance to a dual-use solar developer of eligibility rights with respect to a specific incentive or incentives for a Dual-Use Solar Energy Project with the terms and conditions of those eligibility rights and incentives designated in a Board order.

“Equity” means, as adapted from Federal Executive Order No. 13985 of Jan. 20, 2021 (On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have historically experienced inequitable treatment, such as Black, Latino, and Indigenous and Native

American persons; Asian Americans, Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or adversely impacted by the building or location of their residence.

“Expression of interest” or “EOI” means a written response prepared by a potential applicant in the Pilot Program as part of a pre-qualification process indicating the intent to apply for the Pilot Program.

“Farmer” means, consistent with N.J.A.C. 2:76-10.5(c), an owner or operator of a farming operation who, during the calendar year immediately preceding submission of a Dual-Use Solar Energy Pilot Program application or an expression of interest, realized gross sales of at least \$2,500 of agricultural or horticultural products produced from the farming operation exclusive of any income received for rental of lands.

“Force majeure” means an act of God or any other occurrence beyond the control of an applicant, such as crop loss due to drought or severe weather and does not include a change in Federal or State law.

“Forested land” or “forestland” has the same meaning as set forth at N.J.A.C. 14:8-12.2.

“Horticultural practices” means practices used to produce horticultural crops, including, but not limited to, potted plants, vegetable transplants, cut flowers, nursery plants, trees, shrubs, vine crops, and sod.

“Landowner” means the record owner of the land, duly authorized purchaser of the land under a contract for land purchase, or record owner of the development easement acquired pursuant to N.J.S.A. 4:1C-34.

“NJDA” means the New Jersey Department of Agriculture.

“NJDEP” means the New Jersey Department of Environmental Protection.

“New Jersey public research institution of higher education” means any public research university, college, or community college located in New Jersey.

“Non-permanent agricultural structure” means a movable structure including high tunnels (a greenhouse-like structure used to protect crops and extend the growing season), center-pivot irrigation systems, post-driven fences, trellises, or structures without permanent anchoring systems or foundations, such as animal shelters and some greenhouses.

“Notice of Incentive Availability” or “NOIA” means a notice issued to the public for the purpose of communicating an opportunity for interested parties to submit an expression of interest for a Dual-Use Solar Energy Project for pre-qualification into the Dual-Use Solar Energy Pilot Program.

“Overburdened community” means the same as such term is defined at N.J.A.C. 7:1C-1.5.

“Permanent agricultural structure” means a structure that has been built with a permanent anchoring system or foundation (typically involving cement or concrete). Examples include farmhouses or residential structures, farm retail stores, barns, packhouses, agricultural equipment and materials storage sheds, greenhouses, grain storage facilities, plant and animal processing facilities, cold storage facilities, and feedlots.

“Preserved farmland” means the same as such term is defined at Section 4 of P.L. 2009, c. 213 (N.J.S.A. 54:4-23.3c).

“Prime agricultural soils” has the same meaning as set forth at N.J.A.C. 14:8-12.2.

“Program Year” or “PY” means a 12-month period within the Pilot Program with an associated annual capacity target.

“Project site” means the location of the parcel proposed to contain the Dual-Use Solar Energy Project, including the solar array, balance of system equipment, and the associated research control area together.

“Research control area” means a designated portion of the project site, which does not contain the solar array or balance of system equipment but is equivalent to the array-containing portion with

regard to agricultural productivity potential, farming practices, farm management, and any extraneous factors affecting agricultural productivity.

“SADC” or “Committee” means the State Agriculture Development Committee established pursuant to Section 4 of the Right to Farm Act, P.L. 1983, c. 31 (N.J.S.A. 4:1C-4).

“Selected project” means a Dual-Use Solar Energy Project selected by the Board to participate in the Dual-Use Solar Energy Pilot Program.

“Selected project team” means the entities or representatives thereof that are responsible for a selected project, including, but not limited to, the farmer(s), landowner(s), and solar operator(s).

“Soils of Statewide importance” has the same meaning as set forth at N.J.A.C. 14:8-12.2.

“Solar operator” means the person or entity that installs, owns, or controls the dual-use solar energy generation facilities, structures, and equipment.

“Solicitation round” means the entirety of the solicitation process commencing with a Board order announcing an annual capacity target and concluding within one year, unless otherwise specified within the Board order. A solicitation round may include more than one application period, each with an associated application capacity target.

“Transition zone” has the same meaning as set forth at N.J.A.C. 14:8-12.2.

“Underserved communities” means populations sharing a particular characteristic, as well as geographic communities that are unlikely to have received consistent and systemic fair, just, and impartial treatment that impacted their opportunity to participate equitably in and benefit from various aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of “equity.”

“Unpreserved farmland” means any land that is valued, assessed, and taxed pursuant to the New Jersey Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), and is not preserved farmland.

“Wetlands” has the same meaning as set forth at N.J.A.C. 14:8-12.2.

#### 14:8-13.3 Pilot Program structure

(a) The Pilot Program shall run for at least 36 months, divided into Program Year 1 (PY1), Program Year 2 (PY2), and Program Year 3 (PY3). PY1 shall begin on (the effective date of this rulemaking) and last for 12 months thereafter. Subsequent Program Years shall begin on the one-year anniversary of (the effective date of this rulemaking), at the completion of the previous Program Year.

(b) The Board may extend the Pilot Program by no more than two additional 12-month periods (PY4 and PY5) if the Board, in consultation with the Secretary of Agriculture, determines that such extensions are necessary to adequately evaluate the performance of the projects selected for construction as part of the Pilot Program.

(c) No later than (36 months after the effective date of this rulemaking), at the conclusion of PY3, or no later than (48 or 60 months after the effective date of this rulemaking) if the Board extends the Pilot Program by one year (PY4) or two years (PY5), respectively, the Board, in consultation with the Secretary of Agriculture, shall initiate a rulemaking to adopt rules to convert the Pilot Program to a permanent Dual-Use Solar Energy Program.

(d) For each Program Year, the Board shall initiate an annual solicitation process pursuant to the Dual-Use Solar Energy Act, as described at N.J.A.C. 14:8-13.7.

(e) The Board will commence a solicitation round during a particular Program Year beginning with the issuance of a Board order establishing an initial annual capacity target for that Program Year. Each solicitation round shall have at least one application period. An application period shall be preceded by the Board staff’s issuance of a Notice of Incentive Availability (NOIA). The NOIA will include instructions and requirements for each project team to submit an Expression of Interest (EOI) in participating in the related application period. The NOIA shall provide criteria for project pre-

qualification. Submission of an EOI to Board staff does not bind or commit a project to participate in such application period. However, failure to submit an EOI precludes a project team from participating in the application period for which the EOI was required.

(f) Following receipt of an EOI, Board staff will review the EOI and provide feedback on the proposed project to the applicant. Board staff will determine based on the EOI whether a project is pre-qualified for the next application period. Projects to which Board staff provides pre-qualification approval status will be encouraged to submit an application during the related application period. Projects that Board staff determines are not pre-qualified because they do not meet established participation criteria will not be permitted to submit an application for that application period.

(g) Based upon the responses to the EOI for a particular application period, the Board may adjust a capacity target for successive application periods, as needed. The relevant application period shall commence when the Board issues an announcement of the application period’s capacity target and approves for public distribution a standard form of application to participate in the Pilot Program during that application period.

(h) The application approved for use within an application period shall contain instructions for how applicants should demonstrate the qualities and characteristics of their proposed project. The application instructions will also detail how applications will be evaluated and how any additional eligibility criteria, such as minimum solar capacity or maturity requirements, are to be met.

(i) Board staff shall review for administrative completeness the applications received for a particular application period pursuant to N.J.A.C. 14:8-13.7(i).

(j) The Board shall issue an order or orders approving or disapproving projects, including any conditions relating to project approval, based on the content of each project’s submitted application.

(k) Selected projects shall be subject to the terms and conditions for participating in the Pilot Program as described in this subchapter, as well as to any additional terms or conditions specified by the Board in an order conditionally approving a selected project. The Dual-Use Solar Energy Pilot Program shall provide an adder, the value of which is determined through the solicitation process, to each selected project. The adder shall supplement an incentive amount equivalent to that provided to projects registered in the ADI Program or CSI Program pursuant to N.J.A.C. 14:8-11, based on the applicable market segment or awarded incentive value, if the selected project meets all requirements in this subchapter and the Board order conditionally approving the selected project. The total incentive, consisting of the combined value of the Dual-Use Solar Energy Program adder and the appropriate SuSI Program incentive, shall be paid to each selected project that has received a New Jersey State Certification Number pursuant to N.J.A.C. 14:8-11.5(j) in the form of NJ SREC-IIIs that are created by PJM-EIS GATS for each megawatt-hour generated, metered, and reported to PJM-EIS GATS.

1. A CSI-eligible facility is not required to receive an award in the Board’s CSI Program pursuant to its solicitation process pursuant to N.J.A.C. 14:8-11.10 in order to receive a Dual-Use Solar Energy Pilot Program award. The process for applying to the Pilot Program pursuant to this scenario is described at N.J.A.C. 14:8-13.7(f).

(l) Selected projects shall be subject to monitoring and operational requirements in this subchapter, as well as any requirements in a Board order conditionally approving a selected project. Failure to comply with the terms and conditions expressed in this subchapter or set forth in such a Board order puts the project at risk for timely receipt of the solar incentive and potential revocation of the dual-use adder as described at N.J.A.C. 14:8-13.11.

(m) The aggregated results from all application periods within the solicitation rounds and PYs, the compliance of the selected projects with the Pilot Program’s terms and conditions, and the research results from the selected projects will inform the Board’s development of a permanent dual-use solar energy program that is a component of the SuSI Program.

**14:8-13.4 Pilot Program capacity targets and limits**

(a) The Board shall establish annual capacity targets for selected projects in a Board order commencing a solicitation round. Board staff shall include a capacity target for each application period within the application materials for a particular application period issued for public use as described at N.J.A.C. 14:8-13.7.

(b) The annual capacity target for Dual-Use Solar Energy Projects approved for participation in the Pilot Program during PY3 shall be set to enable the Pilot Program to accommodate as much capacity as possible without exceeding the 200-megawatt (MW) Pilot Program limit. If the Board extends the Pilot Program pursuant to N.J.A.C. 14:8-13.3(b), it may increase the total capacity limit of all Pilot Program projects by no more than 50 MW, as measured in DC, per each of the two possible additional 12-month periods, for a total Pilot Program capacity of 300 MW within five years.

(c) The Board shall consider the amount of unallocated capacity at the end of a Program Year and any capacity allocated to a selected project that has withdrawn from the Pilot Program in establishing the annual capacity targets for subsequent Program Years.

(d) The annual capacity targets may be apportioned to achieve Pilot Program goals, such as diversity in agricultural/horticultural activity or geographic location using recent data such as crop type and animal production classifications in New Jersey, as defined by the National Agricultural Statistics Service within the United States Department of Agriculture.

(e) The Board may establish capacity set-asides within the annual capacity target for particular types of projects pursuant to the criteria established pursuant to N.J.A.C. 14:8-13.7(e) with the intent of studying a diverse pool of selected projects in the Pilot Program. A description of the project characteristics, which may qualify a project for the set-aside, shall be set forth within the NOIA described at N.J.A.C. 14:8-13.7(a). The Board shall establish any set-aside of capacity within an annual capacity target in the Board order announcing a Pilot Program solicitation round.

**14:8-13.5 Pilot Program eligibility**

(a) The Board shall select projects for participation in the Pilot Program in a competitive solicitation process as set forth at N.J.A.C. 14:8-13.7. The selection criteria for applications shall be established by the Board prior to the opening of an application period within the solicitation round.

(b) The capacity limit for an individual Dual-Use Solar Energy Project in the Pilot Program is set at a maximum of 10 MW per project, measured as the sum of the nameplate capacity in DC rating of all PV panels comprising the Dual-Use Solar Energy Project. An application submitted in the Pilot Program must contain only one individual Dual-Use Solar Energy pilot project.

(c) The Board may establish, by Board order prior to the opening of an application period, a minimum capacity limit for individual Dual-Use Solar Energy Projects in the Pilot Program, measured as the sum of the nameplate capacity in DC rating of all PV panels comprising the Dual-Use Solar Energy Project.

(d) An application, as such term is used at N.J.A.C. 14:8-13.7(e), will only be accepted for a Dual-Use Solar Energy Project for which an EOI was submitted to Board staff and for which Board staff has issued a pre-qualification approval notice. Project teams that receive pre-qualification approval for a particular application period may submit the application for that application period to participate in the Pilot Program.

(e) The Board shall provide conditional approval for projects selected in the application process described at N.J.A.C. 14:8-13.7 through a Board order.

(f) The Pilot Program shall be open to the solar generation facilities set forth in this subsection, subject to successful registration requirements for a selected project pursuant to N.J.A.C. 14:8-13.8.

1. New ADI Program facilities and new CSI-eligible facilities that have not commenced commercial operation by having obtained permission to operate from an EDC are eligible to participate in the Pilot Program.

2. For the ADI Program, a separate application from the Pilot Program application is required to be submitted pursuant to the SuSI Program rules at N.J.A.C. 14:8-11.4(a) through (f). A Dual-Use Solar Energy Project is not required to receive approval for an ADI Program incentive prior to applying to the Pilot Program but must receive this approval prior to commencing commercial operation by having obtained permission to operate by an EDC.

3. For the CSI Program, a CSI-eligible facility may apply to the Pilot Program if:

i. It has not received an award from the Board in the CSI Program and uses the highest awarded bid as its base incentive value approved by the Board for the Basic Grid Supply market tranche, categorized as Tranche 1, from the Board's most recent CSI Program solicitation; or

ii. It has already received an incentive award from the Board in the CSI Program, up to the maximum capacity limits for an individual project in the Pilot Program and it successfully registers in the CSI Program pursuant to N.J.A.C. 14:8-11.5 but has not yet received permission to operate from the EDC.

(g) Existing solar projects that have commenced commercial operation by having obtained permission to operate by an EDC may not apply to requalify as a Dual-Use Solar Energy Project pursuant to the Pilot Program.

(h) A selected project that satisfies all conditions including the ADI Program or CSI Program registration requirements, receives permission to operate from an EDC, and obtains a New Jersey State Certification Number shall be considered approved for purposes of calculating the 200 MW Pilot Program limit for the first three Pilot Program years.

(i) Applications will not be accepted for proposals in which an EDC would develop, own, or operate a Dual-Use Solar Energy Project.

**14:8-13.6 Project siting requirements**

(a) Dual-Use Solar Energy Projects shall be located only on unpreserved farmland.

(b) Dual-Use Solar Energy Projects are prohibited from locating on the following land types (collectively "prohibited land uses"), unless a waiver is granted by the Board, in consultation with the NJDEP and the Secretary of Agriculture pursuant to the process set forth at (h) below:

1. Land preserved pursuant to the Green Acres Program, as defined at N.J.A.C. 7:36;

2. Land located within the preservation area of the Pinelands area, as designated at subsection b. of section 10 of P.L. 1979, c. 111 (N.J.S.A. 13:18A-11);

3. Land designated as forest area in the Pinelands Comprehensive Management Plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

4. Land designated as freshwater wetlands, as defined pursuant to P.L. 1987, c. 156 (N.J.S.A. 13:9B-1 et seq.), or coastal wetlands, as defined pursuant to P.L. 1970, c. 272 (N.J.S.A. 13:9A-1 et seq.);

5. Land located within the Highlands preservation area as designated in subsection b. of section 7 of P.L. 2004, c. 120 (N.J.S.A. 13:20-7); or

6. Forested land and associated transition zones, as defined pursuant to N.J.A.C. 14:8-12.2.

(c) A Dual-Use Solar Energy Project applying for an incentive adder pursuant to the CSI Program shall not be subject to the siting limitations for covered agricultural lands as described at N.J.A.C. 14:8-12.4(a) through (g), but shall be subject to the siting restrictions at (d) below.

(d) Dual-Use Solar Energy Projects are prohibited from locating on covered agricultural lands, unless the project is in association with a research study undertaken pursuant to the requirements at N.J.A.C. 14:8-13.10 in coordination with a New Jersey public research institution of higher education, as approved by the Board in consultation with the Secretary of Agriculture.

(e) The land on which the Dual-Use Solar Energy Project is installed shall have had at least the previous three years in continuous agricultural or horticultural usage, as demonstrated by participation



in the State's farmland assessment program pursuant to the New Jersey Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.). Pursuant to this subchapter, the landowner shall prepare and provide to the Board, as part of the EOI in applying to the Pilot Program as described at N.J.A.C. 14:8-13.7(a), a signed affidavit attesting to the historical agricultural or horticultural use of the land prior to the installation of a Dual-Use Solar Energy Project.

(f) Nothing in this subchapter shall be construed to permit siting of Dual-Use Solar Energy Projects on preserved farmland, unless affirmatively allowed pursuant to N.J.S.A. 4:1C-32.4 et seq.

(g) Co-location of solar facilities shall be subject to specific review and permission by the Board through the application process and the SuSI Program rules at N.J.A.C. 14:8-11.

(h) Any entity seeking to locate a Dual-Use Solar Energy Project on prohibited land uses as described at (b) above may file a petition with the Board in accordance with the requirements at N.J.A.C. 14:1-1.2(b) seeking to waive the prohibition for the entity's special case and for good cause shown. The Board, or its designee, shall make a positive finding with regard to any such petition only upon:

1. Consulting with other State agencies, as appropriate;
2. Determining that the petitioner has documented sufficient facts and circumstances establishing the public's specific interest in siting the proposed Dual-Use Solar Energy Project on or within a specific prohibited land use; and
3. Finding that the waiver is in the public interest.

(i) The Board, or its designee, may request additional documentation or evidence from a Dual-Use Solar Energy Project prior to approving or denying a request for any waiver pursuant to this section.

#### 14:8-13.7 Pilot Program solicitation process

(a) Each Pilot Program solicitation round will commence with a Board order, which shall include a proposed annual capacity target for the solicitation round and a directive to Board staff to issue a NOIA for one or more application periods. A NOIA issued by Board staff will set forth any requirements or criteria pursuant to this subchapter and Board order anticipated for applicants for that application period. The NOIA will also set forth instructions for potential applicants to submit EOIs and pre-qualify their proposed Dual-Use Solar Energy Projects for the upcoming application period. All forms and instructions regarding the Pilot Program solicitation process shall be found on the Board's website at [www.nj.gov/bpu](http://www.nj.gov/bpu). Each solicitation round and application period for the Pilot Program shall be conducted separately and independently of the Board's CSI Program solicitation process and CSI-eligible facilities shall not be required to have been selected to receive an award in the CSI Program in order to participate in a solicitation round or application period in the Pilot Program.

1. The Board's, or its designee's, instructions for an applicant's completion and submission of an EOI shall include a due date and the method of submission.

2. An EOI will be required of each applicant as a prerequisite for submittal of a Dual-Use Solar Energy Pilot Program application.

3. The EOI shall identify the proposed project team. It must also include signed certifications from the landowner, the solar operator, and the farmer, as applicable, attesting to their familiarity with the requirements for participation in the Pilot Program as described in this chapter, as well as to the accuracy of the submitted documents. The EOI must also include a written lease agreement between the landowner, the solar operator, and the farmer, as applicable. If applicable, the lease agreement must be effective for a minimum of three years and any changes to the lease agreement must be submitted as a modification to the Construction, Operations, Monitoring, and Project Research Plan (COMPR), as described at (k) below, within 90 days of said changes becoming effective.

4. The EOI shall identify the basic characteristics of the proposed Dual-Use Solar Energy Project, including, but not limited to, the following:

i. Municipal tax map or site plan with the block and lot location of the farm parcel clearly identified that shows the delineation of the proposed project site, research control area, and fencing;

ii. Solar capacity;

iii. Array type including a description of any innovative design or technology proposed;

iv. Calculation of the land area covered by the array and control area;

v. A description of the agricultural or horticultural use of the proposed project site over the previous three years;

vi. A description of the agricultural or horticultural activities proposed on the areas under and adjacent to the array for the next three years;

vii. The most recent 12 months of historic electricity consumption according to a utility bill showing the site host's name, address, and electric tariff, if applicable, if the project is proposed to be net metered;

viii. Anticipated means of electricity sale;

ix. Current state of project maturity including any design, contracting, legal, permitting, or zoning review work performed and status of interconnection to a distribution or transmission system operated by a New Jersey electric public utility or local government unit;

x. Anticipated construction schedule, including anticipated cost milestones and development milestones, if available;

xi. Estimated total installed cost including solar equipment, research required pursuant to the Pilot Program rules, monitoring and data collection equipment, labor, and soft costs;

xii. Estimated incremental costs, as a subset of total installed costs, to be incurred as a result of participation in the Pilot Program specific to the agricultural or horticultural aspects of the Dual-Use Solar Energy Project;

xiii. Estimated Dual-Use incentive adder required to cover incremental costs; and

xiv. Contact information for one representative appointed by the project team to serve as a point of contact for Board staff and to be responsible for submitting documents required throughout the solicitation process.

(b) Board staff shall provide initial feedback on EOIs from potential applicants about the quality of their Dual-Use Solar Energy Project proposals, including any modifications required to obtain pre-qualification approval, no less than 30 days prior to the opening of the applicable application round. An approval from the relevant EDC or regional transmission organization to construct or interconnect the proposed project is not required prior to submission of an EOI or as a condition of project pre-qualification.

(c) Board staff shall compile the results of the EOI, including number of proposed Dual-Use Solar Energy Projects submitted, cumulative capacity, array types, and agricultural and horticultural activities proposed.

(d) Board staff shall report the compiled results of the EOI to the Board along with a recommendation for establishing or adjusting, as needed, a capacity target for the next application period, any capacity set-asides, any application fees, and any minimum criteria in addition to those set forth in this subchapter for participation in the related solicitation round.

(e) Based on the results of the EOI and Board staff's recommendations, for each application period, the Board shall establish a standard form of application for participation in the Pilot Program, the detailed criteria for evaluating and scoring applications, and application fees, if needed. Any application fees collected shall be submitted to the New Jersey Clean Energy Program to offset ratepayer costs used to administer the Pilot Program.

(f) The application must include the information listed at (a) above that is required to be submitted with the EOI and must also include the following:

1. An updated municipal tax map or site plan, with block and lot location of the farm parcel clearly identified, that shows the delineation of the proposed site, its associated research control areas, its proposed location of the balance of system equipment and solar

array, and fencing, and whether any changes have been made to the submission pursuant to the EOI; and

2. Documentation demonstrating how the applicant proposes to meet the application criteria.

(g) To enable the Board to assemble a diverse pool of selected projects representing varying sizes and involving diverse types of agricultural and horticultural production, criteria that will be considered by the Board in evaluating and scoring an application include, but are not limited to:

1. Proposals for monitoring the quality of agricultural or horticultural use of the land including the identity and role of any third-party consultant or New Jersey public research institution of higher education that has not been contracted with the Board for purposes of providing Pilot Program research activities;

2. The incentive level the applicant seeks, including the ADI Program or CSI Program incentive amount, based on New Jersey SREC-II values established by the Board pursuant to N.J.A.C. 14:8-11.6 and bids awarded by the Board pursuant to N.J.A.C. 14:8-11.10, and, if required, an adder designed to supplement the value of an ADI Program or CSI Program incentive;

3. Geographic location, including whether the proposed project is part of an overburdened community or located in an underserved community;

4. Interconnection planning status including, but not limited to, demonstrated proof of submission of an interconnection application to an EDC or PJM Interconnection LLC;

5. Proposals for minimizing and mitigating negative impacts to farmland during construction, operation, and decommissioning;

6. Proposals to address decommissioning of the Dual-Use Solar Energy Project equipment, including both procedures and funding consistent with provisions pursuant to N.J.A.C. 14:8-13.12;

7. Proposals for addressing stormwater runoff and other environmental issues;

8. Technical feasibility;

9. Technical innovation;

10. The quality of the proposed design of the research plan pursuant to N.J.A.C. 14:8-13.10 that includes providing crop performance data and other data related to the productivity and viability of dual-use solar and demonstrates the project team's participation in the research studies required of all approved projects; and

11. A three-year plan for the farming operation intended to occur below and adjacent to the solar array including any special operational requirements specific to the solar array. The three-year plan shall include, but is not limited to, crop types, cover cropping, standard agricultural practices, and other cultural practices over this period that are deemed necessary.

(h) The application evaluation criteria in each solicitation round will be defined to seek diversity and innovation in agricultural and horticultural use, as well as project size. The evaluation criteria used to score applications, any application fees required, and criteria for participation in the solicitation round will be set forth in the standard form of application, which will describe the information to be submitted to Board staff for evaluation.

(i) Following the close of an application period, Board staff, in consultation with the Secretary of Agriculture, or the Secretary's designee, will review applications for administrative completeness. If an application is deficient, Board staff will advise the applicant that items must be remedied to correct the deficiencies. Applicants with deficient applications will be granted 10 business days to cure the deficiency. Board staff may request that an applicant provide additional or modified information to complete its application.

1. Board staff may deem an application administratively incomplete and reject it if any of the following conditions are met:

i. An application that is substantively incomplete, such as not submitting a map or site plan at the close of the cure period;

ii. An application that is not in compliance with this subchapter; or

iii. An application that does not meet the requirements for selection as set forth in the standard form of application approved by

the Board pursuant to (e) above and the selection process outlined pursuant to this subchapter.

(j) The Board shall consult with the Secretary of Agriculture in the review and approval of all Dual-Use Solar Energy Projects pursuant to the Pilot Program. Board staff, in consultation with the Secretary of Agriculture, shall score applications deemed administratively complete pursuant to (i) above based on responses to the criteria for evaluation established in the application form. Board staff will present to the Board the results of its evaluation of the applications, the advice of the Secretary of Agriculture, and a recommendation for approval or denial for each application as well as any conditions for approval. The Board shall within 180 days after receipt, approve, disapprove, or approve with conditions an application submitted pursuant to this subchapter. The 180-day period for the Board to approve, conditionally approve, or deny the application will commence on the date the complete application was filed.

1. The Board may opt to select Dual-Use Solar Energy Projects until the program capacity target for that Program Year is filled. The Board is not obligated to select projects if an application period or solicitation round is undersubscribed. The Board may select projects with total capacity that exceeds the annual or per application period capacity target if a solicitation round or application period is oversubscribed, as long as the applicable maximum total Pilot Program capacity limits of 200 MW or 300 MW have not been exceeded.

2. The Board shall memorialize the results of an application period in a Board order, which includes summary information describing the responses to the application for that application period, projects selected for an award, and authorization to Board staff to issue award letters to selected applicants. The project award letters shall specify any terms and conditions governing project eligibility for adders.

(k) Key elements of the application materials submitted for selected projects shall form the basis of a COMPR. A COMPR shall establish a record for an applicant's project's planned design, construction, operation, maintenance, monitoring, and terms and conditions for maintaining eligibility for the Pilot Program incentive adder. The Board order conditionally approving the project application, and any terms or conditions imposed as part of the approval will become part of the COMPR, as described further at N.J.A.C. 14:8-13.13.

(l) All solicitation rounds and associated application periods shall otherwise follow the processes and procedures identified in this subchapter.

(m) In the application evaluation and selection process, Board staff may recommend to the Board that it is appropriate to limit the number of projects approved for a single applicant in a Program Year to promote a diverse pool of applicants.

#### 14:8-13.8 Conditions for a project awarded an incentive

(a) The Pilot Program registration process shall be developed by Board staff and the SuSI Program registration manager in compliance with Board rules and orders. All forms and instructions regarding the SuSI Program registration process shall be found on the Board's New Jersey Clean Energy Program website at [www.njcleanenergy.com](http://www.njcleanenergy.com).

(b) For any selected project, a new registration package must be submitted to the Board, or its designee, pursuant to N.J.A.C. 14:8-11.5 and in accordance with other Board rules and orders and the instructions posted on the New Jersey Clean Energy Program website. If necessary, a selected project must submit a revision of its project capacity to an existing SuSI Program registration.

(c) Each project shall be equipped with a utility revenue grade meter dedicated to the measurement of the electricity produced for the purpose of SREC-II creation. For net metering customer-generators, this production meter is additional to the meter owned and used by the EDC for billing purposes.

(d) An appointed representative of a selected project team must provide, on an annual basis on the anniversary of commencing commercial operations by having obtained permission to operate by an EDC, evidence as described in this subsection that the land on

which the Dual-Use Solar Energy Project is installed continues to be actively devoted to agricultural or horticultural use. Pilot Program participants must demonstrate that the farm parcel on which the project is located is continuously participating in the State's farmland assessment program pursuant to N.J.S.A. 54:4-23.1 et seq., through submission of the following:

1. Documentation in the form of the farm's application for farmland assessment pursuant to N.J.A.C. 18:15, referred to as Form FA-1, that the farm parcel containing the selected project's block and lot qualified for New Jersey Farmland Assessment for the previous year.

2. For each year throughout the lifetime of the Dual-Use Solar Energy Pilot Program award, the farm's current year Form FA-1 shall be submitted to the Board Secretary's Office as an amendment to the COMPR.

(e) Any Dual-Use Solar Energy Project approved to participate in the Pilot Program that does not maintain active agricultural or horticultural use of the land risks forfeiture of future solar incentive payments.

(f) Within 90 days of receipt of notice of selection for a Dual-Use Solar Energy Pilot Program award, a report prepared by a qualified soil scientist or geotechnical engineer is required to be added to the COMPR on the pre-construction soil quality characteristics across the project site, solar array, and research control area pursuant to N.J.A.C. 14:8-13.10(b).

#### 14:8-13.9 Installation, construction, and operational requirements

(a) Selected project teams and their selected projects shall comply with all applicable Federal, State, or local laws, rules, regulations, or ordinances.

1. Pursuant to N.J.S.A. 48:3-87.13.f, notwithstanding any law, ordinance, rule, or regulation to the contrary, a selected project approved pursuant to this subchapter shall be a permitted use within every municipality in New Jersey.

2. Selected project teams seeking protection for their projects pursuant to New Jersey's Right to Farm Act, N.J.S.A. 4:1C-1 et seq., must comply with the relevant provisions of the agricultural management practices at N.J.A.C. 2:76-2A.12 and 2A.13 and not pose a direct threat to public health and safety.

3. All Dual-Use Solar Energy Projects shall comply with the Stormwater Management rules, N.J.A.C. 7:8.

(b) Selected projects shall conform to all codes, standards, and licensing requirements that were applicable at the time the project was constructed. All selected projects including the research control areas must be fenced with deer fencing at least eight feet tall.

1. If fencing is required pursuant to any code, ordinance, permit requirement, or statute, the selected project team shall install fencing at least eight feet tall around the entire project site including the dual-use array and control areas. If fencing is not required around the entire project site pursuant to any code, ordinance, permit requirement, or statute, separate and distinct fences may be installed around the dual-use solar array and around the research control area, respectively.

(c) Dual-Use Solar Energy Projects must be connected to the distribution or transmission system owned or operated by a New Jersey electric public utility or local government unit.

(d) Dual-use system designs that incorporate permanent agricultural structures are not eligible to participate in the Pilot Program. This prohibition includes designs with non-permanent agricultural structures that are directly attached to permanent structures.

(e) Participants shall also incorporate the following additional design practices when developing a project for the Pilot Program:

1. Arrays must be designed taking into account the requirements for specific farming practices and the energy collection impacts of particular design features, to minimize negative impacts to the farming operations and the land.

2. Array designs must be compatible with long-term, continued use and enable sites to support diverse future agricultural and/or horticultural activities.

3. Key design specifications for a solar array approved pursuant to the Pilot Program must include, but need not be limited to, area farm yields, electricity production capacity, location of modules and system equipment, dimensions, array height, row spacing, tilt or track angle limits, orientation, mounting configuration, and row alignment. Selection of row alignment must consider impacts from, including, but not limited to, land boundaries, erosion prevention, elevation contours, water features, roads, and buildings.

4. Designs must demonstrate consideration of the geometry of the subject parcel and solar array such that the array's location, orientation, and configuration minimize and account for edge effects pertaining to the relationships between the solar array, plant growth, and farm equipment accessibility. The project design must facilitate the ability to operate farm equipment around the edges of modules and array racking such that farm activities are minimally disrupted.

5. The project site of a selected project must include a research control area, or area of farmland without solar panels but otherwise equal in potential agricultural productivity and all extraneous factors affecting agricultural productivity characteristics compared to the area under and adjacent to the solar array. The research control area will be used to compare the performance of the crop or animals raised with the same crop or animals below and adjacent to the solar array.

i. The land within the research control area must be farmed by the same farmer using the same agricultural or horticultural practices as those employed in the area under, and adjacent, to the solar array.

ii. 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.

6. The use of concrete in structural footings is prohibited, unless written justification is supplied by a licensed professional engineer. The use of concrete shall be acceptable for the purpose of installing a shallow concrete pad for placement of balance of system equipment such as inverters or transformers.

7. Array designs shall plan for minimizing the impacts on soils and anticipate the need for rotating crops annually and interannually.

8. If applicable, the design shall account for ensuring the safety of animals. For farms that incorporate agritourism, an element of the design shall also account for protecting the public and ensuring public safety around the solar array and its associated infrastructure.

9. Designs shall also incorporate any additional metric(s) deemed necessary to inform a permanent program, as established by the Board order preceding each application period.

(f) Farming activities occurring below and adjacent to the solar array and within the designated research control areas shall follow the current three-year plan set forth within the COMPR on file with the Board Secretary's Office.

1. The three-year plan incorporated into the COMPR must include, but is not limited to, crop types, cover cropping, standard agricultural practices, and other cultural practices over this period that are deemed necessary.

2. Changes to agricultural and horticultural practices anticipated to occur within the next three years must be submitted as a request to modify the COMPR to Board staff, and/or its designee, for review and approval. Board staff will respond to a request to change a three-year plan within 10 business days and provide a final determination within 30 calendar days. If the selected project team disagrees with Board staff's determination, selected project teams may petition the Board for relief.

(g) Selected projects must become fully operational, including having monitoring equipment installed for the selected project, within the timeframes required pursuant to the applicable SuSI Program pursuant to N.J.A.C. 14:8-11 for the ADI Program or the CSI Program, as applicable.

1. Projects that are awarded a dual-use incentive and are registered in the SuSI Program shall be eligible for the extension opportunities afforded to projects in their respective ADI Program or CSI Program, except that projects registered in the ADI Program

shall receive, upon providing a written justification, additional time needed, up to a total of two, six-month extensions beyond the one-year deadline, as an update or modification requested to the COMPR pursuant to the procedures outlined at N.J.A.C. 14:8-13.13, in lieu of the Board's extension process pursuant to N.J.A.C. 14:8-11.5(i) and petition process at N.J.A.C. 14:1-1.2(b) for a waiver requesting additional time beyond an additional six months past a project's registration expiration date.

#### 14:8-13.10 Monitoring and research requirements

(a) The COMPR shall establish the minimum monitoring and research requirements for a selected project throughout the life of the project. A New Jersey public research institution of higher education may serve as the primary designer and organizer of research studies involving projects selected as part of the Pilot Program.

1. The Board, or its designee, will manage and collect the research data listed at (b) through (n) below for the first three years of a selected project 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. The cost of the research equipment shall be the responsibility of the applicant, including the equipment needed for collecting data pertaining to environmental metrics.

2. Monitoring requirements needed to support compliance for maintaining unreserved farmland in active use, and other terms and conditions specified for a selected project, after the end of the Pilot Program are subject to the results of the Pilot Program and Board approval through a Board order.

3. The requirements for a selected project must be included in the COMPR and must include, but need not be limited to, metrics that monitor and track:

i. The quality of agricultural and horticultural use of the land, including, but not limited to, separate reporting of yields within the solar array-covered and the research control area;

ii. The amount of electricity generated;

iii. Impacts on the land;

iv. Stormwater runoff and other environmental issues; and

v. Any additional parameters deemed necessary for researching and evaluating the Pilot Program as established by the Board order preceding each application period.

(b) Monitoring of the pre-construction soil quality characteristics across the project site, solar array, and research control area as required at N.J.A.C. 14:8-13.8(f) must include the following parameters:

1. Soil map unit;

2. Soil textural classification;

3. Hydrologic soil group;

4. Organic matter content;

5. Salinity;

6. Macro- and micro-nutrient content;

7. Bulk density;

8. Overall slope; and

9. Topography of the project site.

(c) Monitoring of the soil and environmental conditions for selected projects after construction of the facility is required and must include the following parameters:

1. Soil density and compaction;

2. Organic matter content; and

3. Any other environmental parameters specified for the project site pursuant to the COMPR and deemed necessary for the Board to inform a permanent program, as established by Board order for each application period.

(d) Data collection for Dual-Use Solar Energy Projects not located on covered agricultural lands must include the following information pertaining to the project site:

1. Name, phone number, and email address for each member or entity of the selected project team;

2. Postal address of the proposed land parcel on which the Dual-Use Solar Energy Project will be located, if applicable;

3. GPS coordinates;

4. Soil type and topography;

5. For net-metered projects, two-year record of electricity consumption, in the form of utility bills, prior to solar array installation;

6. Type of agricultural or horticultural activity;

7. Solar array size, including ground area, type, panel specifications, number of panels, and nominal production;

8. Size of area within the solar array area rendered unfarmable by the solar array structure and the location and size of area of any required infrastructure, meaning the balance of system equipment;

9. Installation date that specifies the first day of operation of the solar array;

10. Name of local electric utility;

11. Name of the solar developer involved with the project design and installation; and

12. Any additional metric(s) deemed necessary to inform a permanent program, as established by Board order, for each application period.

(e) Data collection for Dual-Use Solar Energy Projects located on covered agricultural lands must include the parameters established at (d) above in addition to any other metric(s) deemed necessary to inform a permanent program pertaining to the project site, as established by Board order with each application period.

(f) Data collection for Dual-Use Solar Energy Projects not located on covered agricultural lands must include the following information pertaining to crop production:

1. Type of crop;

2. Sowing or transplanting date;

3. Sowing or transplanting rate;

4. Harvest date(s) for both the solar array covered area and research control areas, separately;

5. Crop yield for both the solar array covered area and research control areas, separately;

6. Information on whether having an agrivoltaic array on-farm has led the farmer to introduce, expand, decrease, or stop production of specific crops; and

7. Any additional metric(s) deemed necessary to inform a permanent program, as established by the Board order, for each application period. Additional metrics may include data on the impacts of agrivoltaics on farm viability and data on farmers' experiences with agrivoltaics, including challenges encountered and adaptations made to farm operations due to the introduction of agrivoltaics.

(g) Data collection for Dual-Use Solar Energy Projects located on covered agricultural lands must include the parameters established at (f) above for crop production, in addition to the following:

1. Pre-planting soil prep, including dates;

2. Type of pre-planting soil prep;

3. Sowing or transplanting equipment used;

4. Applications of fertilizer, including dates, rates, and equipment;

5. Applications of chemicals, including dates, rates, and equipment;

6. Post-planting soil and crop maintenance;

7. Equipment used for post-planting soil and crop maintenance;

8. Irrigation methods, including dates and rates, if applicable;

9. Harvesting equipment used;

10. Post-harvesting soil maintenance, if applicable; and

11. Post-harvesting cover crop planting and maintenance, if applicable.

(h) Data collection for Dual-Use Solar Energy Projects not located on covered agricultural lands must include the following information pertaining to animal production:

1. Type of animal;

2. Type of grazing strategy, including procedures, dates, and number of grazing days;

3. Average start weight of animals when put on pasture, including date;

4. Yield of hay/silage;

5. Supply of drinking water, including name and type of system and rate;

6. Average end weight of animals when removed from pasture, including date, if applicable;

7. Grass maintenance after animals are removed from pasture, including dates, if applicable;

8. Direct reporting on whether having an agrivoltaics array on-farm has led the farmer to introduce, expand, decrease, or stop production of specific livestock types; and

9. Any additional metric(s) deemed necessary to inform a permanent program, as established by Board order with each application period. Additional metrics may include data on the impacts of agrivoltaics on farm viability and data on farmers' experiences with agrivoltaics, including challenges encountered and adaptations made to farm operations due to the introduction of agrivoltaics.

(i) Data collection for Dual-Use Solar Energy Projects located on covered agricultural lands must include the parameters established at (h) above for animal production, in addition to the following:

1. Grass maintenance, including fertilizers, chemicals, dates, and rates;

2. Equipment used for grass maintenance;

3. Procedures and equipment used for hay/silage production, including dates; and

4. Equipment used for pasture maintenance after animals are removed, including dates, if applicable.

(j) Data collection for all Dual-Use Solar Energy Projects pertaining to environmental conditions, including, but not limited to, air temperature, solar radiation, relative humidity, and soil temperature, must adhere to the procedures set forth in this subsection.

1. Data should be recorded in time intervals of no longer than one hour.

2. If recording a single value for a specific time interval, that value should be the average measurement of all the measurements collected during that time interval.

3. All environmental data should be collected in duplicate: one measurement at a representative location in the control area, which is unobstructed by any solar panel, and the other at a comparable location in the dual-use area impacted by the solar panels. The locations must be those which were approved in the most recent version of the COMPR for the selected project.

4. Sensors should be calibrated and re-calibrated as needed, according to manufacturers' recommendations.

(k) Data collection for Dual-Use Solar Energy Projects not located on covered agricultural lands must include the following information pertaining to environmental conditions:

1. Solar radiation measured horizontally;

2. Air temperature using an actively aspirated box;

3. Air relative humidity using an actively aspirated box;

4. Soil temperature at six inches below the surface;

5. Soil volumetric water content at six inches below the surface; and

6. Any additional metric(s) deemed necessary to inform a permanent program, as established by Board order with each application period.

(l) Data collection for Dual-Use Solar Energy Projects located on covered agricultural lands must include the parameters established at (k) above for environmental conditions in addition to precipitation, including date and amount.

(m) Data collection for all Dual-Use Solar Energy Projects must include the following information pertaining to solar array performance:

1. Electricity production using time intervals of no less than one day;

2. For net-metered projects, monthly accounting of any additional electricity purchased from the local utility;

3. Income to farmer/landowner from lessee for projects with a leased array site;

4. Performance of individual rows or module strings, if readily available;

5. Solar irradiance as measured at the array, such as a sensor attached to a rack, if applicable;

6. Maintenance and repairs to the solar equipment, if applicable; and

7. Any additional metric(s) deemed necessary to inform a permanent program, as established by Board order with each application period.

(n) Data collection for all Dual-Use Solar Energy Projects must include the following information, obtained through responses to a Board-approved survey, pertaining to general attitudes, experience with dual-use, and policy views:

1. Farmers' views toward agrivoltaics as an agricultural technology and how their views change with further experience;

2. Challenges farmers encountered with agrivoltaics, including whether or how these challenges were overcome, and whether adaptations were made to farm operations due to the introduction of agrivoltaics;

3. Farmers' views regarding possible public policies that would encourage or advance agrivoltaics in New Jersey; and

4. Any additional metric(s) deemed necessary to inform a permanent program, as established by Board order for each application period.

(o) After the completion of the Pilot Program, the terms and the conditions in a selected project's COMPR, including any conditions specified by the Board in an order, shall be the responsibility of a selected project.

#### 14:8-13.11 Compliance and remediation

(a) In cases involving the failure of a selected project team to comply with the terms and conditions for participation in the Pilot Program pursuant to this subchapter, including any conditions specified by the Board in an order, the Board reserves the right to impose penalties on a selected project commensurate with the documented infraction. Board staff shall document the terms or conditions violated, share the findings with the selected project team, and explore opportunities to cure the violations. In cases where the project team is unable or unwilling to cure the violations, the Board may:

1. Order the dual-use incentive to be withheld until the violation is resolved;

2. Seek rescission of the dual-use incentive paid to the project for a period of time to be determined by the Board; or

3. Require the developer to decommission the project pursuant to this subchapter and return the land to its prior agricultural or horticultural usage.

(b) The NJDA may request that the Board suspend or revoke an approval issued pursuant to this subchapter for a violation of any term or condition of the approval or any provision of this subchapter, unless caused by force majeure.

1. In the case of force majeure, the Board may determine, in consultation with the NJDA, that the applicable event or circumstances caused the violation.

2. Dual-Use Solar Energy Projects awarded incentives in the Pilot Program as an adder or a supplemental incentive pursuant to the ADI Program or CSI Program pursuant to N.J.A.C. 14:8-11 must adhere to the applicable requirements for the lifetime of the project and these requirements shall be enforceable pursuant to this subchapter.

(c) The Board, or its designee, shall work with the NJDA to audit compliance with the terms of the Pilot Program, including periodic site visits, and work with the selected project team to remedy any non-compliance with the requirements set forth in this subchapter in accordance with (d) below.

(d) The Board, or its designee, shall contact the selected project team, in writing, that its Dual-Use Solar Energy Project approved to participate in the Pilot Program is not meeting the requirements of the Pilot Program. The selected project team shall be subject to the following enforcement procedure:

1. The selected project team shall submit a remedial action plan to remedy the deficiency, or deficiencies, to the Board within 30 days of

receiving written notification from the Board, for review and approval prior to implementing remedial action.

2. Based on the remedial action plan submitted by the selected project team, and Board staff's evaluation of that plan, the selected project team shall be placed on probation for a period of time between 30 and 120 days. The probation period shall be based on the amount of time requested by the selected project team and Board staff's determination that the requested time period is accurate and appropriate to address noted deficiencies. Evidence of the amount of time needed to cure the deficiency, or deficiencies, shall be clearly documented, in writing, by the selected project team in the remedial action plan. The documentation may include information, such as photos, gathered from the site.

3. During the probationary period, any financial incentive in the form of the SREC-II shall be withheld pending successful resolution of the violation.

4. If the selected project team fails to correct the deficiency or deficiencies, including implementing the remedial action plan approved by the Board, by the end of the probationary period, the selected project may be terminated from the Pilot Program, and the incentive for the dual-use pilot project suspended.

#### 14:8-13.12 Decommissioning procedures

(a) Decommissioning procedures for Dual-Use Solar Energy Projects applying for and approved as selected projects that will participate in the Pilot Program, at a minimum, must account for the following:

1. The sequence for facility infrastructure removal and site restoration to prior agricultural conditions in the event that solar installations will be removed;

2. The party responsible for removal and restoration back to prior agricultural conditions in the event that solar installations will be removed;

3. The party responsible for the costs of decommissioning;

4. The prevention of topsoil within inter-panel row travel lanes from becoming compacted or otherwise co-mingled with subsoil layers by construction traffic; and

5. Any additional procedure(s) deemed necessary to inform a permanent program, as established by Board order preceding each solicitation round or Program Year.

#### 14:8-13.13 Reporting and recordkeeping

(a) The COMPR derived from a selected project's application and associated conditions for Board approval shall form the basis of the primary reporting and recordkeeping tool documenting the project's participation in the Pilot Program.

(b) The Board, or its designee, shall use the COMPR in the evaluation of the individual project and in the evaluation of the Pilot Program to inform the design of a permanent dual-use program.

(c) The selected project team shall keep the COMPR current over the life of the project with updates supplied by the project team. The Board will post the COMPR to the Board's Public Document Search page on its website, including any updates submitted to the Board Secretary's Office in consultation with Board staff.

1. The COMPR shall be kept updated throughout the term of a Dual-Use Solar Energy Pilot Program award and until the expiration of the 15-year qualification life. For the duration of the Pilot Program, the COMPR shall be updated by the project team annually on the anniversary of the commencement of commercial operations for the selected project.

2. The selected project team shall submit a milestone reporting form to the SuSI Program registration manager on a quarterly basis, if one is not already required for the project pursuant to SuSI Program rules at N.J.A.C. 14:8-11.5.

(d) A selected project shall provide annual updates to Board staff on the status of its progress through a form to be made available by Board staff. Annual updates shall be due on the anniversary of the selected project's commencement of commercial operations by having obtained permission to operate by an EDC. Selected projects shall meet additional reporting requirements pursuant to this subchapter.

(e) Requests from the selected project team to change any provision of the project must be submitted, in writing, to the Board Secretary and approved by Board staff in consultation with the NJDA. Requests to modify a provision of the selected project will be reviewed and approved or denied, in writing, by Board staff within 30 days of receipt by the Board Secretary.

(f) The Board must be notified, in writing, in case of sale, transfer, contract modification, or other material change to the selected project team initially listed in the dual-use solar application. Specifically, within 30 days of a material change in:

1. The control of the project, each new beneficial owner is required to provide formal notice and evidence to the Board of its individual and/or corporate name, tax identification number, address, contact telephone number, and percentage of ownership of the project; and

2. The Dual-Use Solar Energy Project operator, such new project operator is required to provide formal notice and evidence to the Board of their individual and/or corporate names, tax identification number, address, and contact telephone number.

(g) Each Dual-Use Solar Energy Project owner, and any successor, shall retain a record of all COMPRs, including revisions thereto, contracts, disclosure forms, proof of eligibility, and generation allocation lists for a period of at least 15 years from the date of the project's approval. Each of these documents must be made available within 14 business days upon request from the Board or Board staff.

1. Dual-use solar developers and owners are responsible for complying with all subsequent revisions approved by Board staff and maintaining a current copy of the COMPR on the Public Document Search page of the Board's website using the docket number assigned to the selected project's application.

2. Board staff shall inform a participant in the Pilot Program of non-compliance with a term or condition of approval of a selected project by written notice, which shall be emailed to the selected project team. The written notice shall include a description of any violation or conditions that require remediation and instructions for submitting a remedial action plan. The selected project team must update the COMPR within 30 calendar days of the Board staff's approval of the remedial action plan.

3. The landowner listed in the COMPR is responsible for notifying the Board of any changes in the ownership of the land or change of farmer or solar operator. This notification will be made through a request to change provisions of the COMPR and must be submitted, in writing, to the Board Secretary and approved by Board staff in consultation with the NJDA.

(h) The Board shall publish and maintain information pertaining to the Pilot Program on its website including, but not limited to:

1. NOIA, instructions for filing a pre-application EOI, solicitation details, application requirements, forms, and evaluation criteria;

2. The list of selected projects, including names, locations, sizes, and approval status;

3. The total capacity of selected, registered, and approved Dual-Use Solar Energy Projects for each Program Year;

4. Educational materials and resources; and

5. Other information relevant to the status of the Pilot Program.

(i) 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.

## TRANSPORTATION

### (a)

#### MOTOR VEHICLE COMMISSION

##### Zone of Rate Freedom

##### Proposed Readoption with Amendments: N.J.A.C. 16:53D

Authorized By: Latrecia Littles-Floyd, Acting Chair and Chief Administrator, Motor Vehicle Commission.