

with the burden-shifting framework used by New Jersey courts and the Division to determine disparate impact liability pursuant to the LAD.

The changes made upon adoption to the definitions of “complainant,” “employee,” “housing financial assistance,” “housing provider,” “lending institutions,” and “real estate-related transaction” at N.J.A.C. 13:16-1.3; to who is authorized to file a complaint pursuant to the LAD at N.J.A.C. 13:16-2.1(c); to the example concerning algorithmic discrimination at N.J.A.C. 13:16-2.4(e); to replace “online application technology” with “an automated employment decision tool” at N.J.A.C. 13:16-3.1(c); and to reorganize the sections and correct references are not subject to any Federal requirements or standards. The change made upon adoption to remove “equally effective” each time it appears throughout the rules to describe “less discriminatory alternative” further aligns New Jersey’s regulations with Federal requirements stated by the EEOC in Title VII of the Civil Rights Act of 1964, at 42 U.S.C. § 2000e-2(k), and in the Uniform Guidelines for Employee Selection Procedures, at 29 CFR 1607, and by HUD as set forth in the Reinstatement of HUD’s Discriminatory Effects Standard, 24 CFR 100 (2023). The change made upon adoption to use the term “consumer report” instead of “consumer credit report” further aligns New Jersey’s regulations with the Federal Fair Credit Reporting Act.

## PUBLIC UTILITIES

### (a)

#### BOARD OF PUBLIC UTILITIES

##### Dual-Use Solar Energy Pilot Program

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

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

Proposed: December 2, 2024, at 56 N.J.R. 2271(a).

Adopted: November 21, 2025, by the New Jersey Board of Public Utilities, Christine Guhl-Sadovy, President, Dr. Zenon Christodoulou, Ph.D., and Michael Bange, Commissioners.

Filed: November 25, 2025, as R.2026 d.008, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) and with proposed N.J.A.C. 14:8-13.3(k); 13.5(f)3i; 13.7(f)2; 13.10(b), (c), (k), and (l); and 13.13(c)2 not adopted, but still pending.

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

BPU Docket Number: QX24080597.

Effective Date: January 5, 2026.

Expiration Date: February 27, 2026.

##### Summary of Public Comments and Agency Responses:

Written comments were received by: BlueWave; ForeFront Power; Lightstar; Mid Atlantic States Career and Education Center (MASCEC) and Tatleaux Solar Group (Tatleaux) (MASCEC-Tatleaux); New Jersey Division of Rate Counsel (RC); Renewable Properties; and Vermont Agency of Agriculture, Food, and Markets (VAAFM).

##### General Comments

1. COMMENT: The commenter supports the Board’s mandate to use competitive market mechanisms to evaluate and score eligible projects and market forces to guide the establishment of financial incentives in the Dual-Use Solar Energy Pilot Program (“Pilot Program” or “Program”), which reduces costs to ratepayers. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

2. COMMENT: The commenter supports rule development for the Pilot Program and recognizes its potential benefits, including increased production of clean energy, increased revenues for farmers and rural landowners, and more efficient use of agricultural land compared to utility-scale solar. The commenter states that the implementation of a Pilot Program will reduce the impact of unanticipated outcomes in a permanent program and is likely to reduce costs to ratepayers. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

3. COMMENT: The commenter asks the Board to take costs for ratepayers under consideration when implementing the Pilot Program. Specifically, the Board should recognize that even small additional rate increases are burdensome to New Jersey households and businesses and commented that the Pilot Program is one of several solar energy programs financially backed by New Jersey ratepayers with cumulative costs to date amounting to billions of dollars. (RC)

RESPONSE: The Board is sensitive to the cost of the solar programs to ratepayers. The solar programs are designed to align incentive costs with the representative costs and benefits of solar within distinct market segments and to harness the power of competition to reduce the impact to ratepayers. Additionally, as part of the Pilot Program, the Board is tracking the incremental costs, as a subset of total installed costs, as a result of participation in the Program. The information to be collected includes data regarding agrivoltaic systems versus traditional photovoltaic systems, in order to evaluate the appropriate incentive levels for Pilot Program projects.

4. COMMENT: With respect to protecting overburdened and underserved communities, two commenters support the Pilot Program’s intent to meet State goals, protect farmland, and enable access to residents not otherwise able to benefit from clean energy. (ForeFront Power and MASCEC-Tatleaux)

RESPONSE: The Board thanks the commenters for their support in its efforts to protect overburdened and underserved communities.

5. COMMENT: The commenters believe that their joint venture, which consists of a partnership between greenhouse farming and solar electricity projects, should be studied through the Board’s Pilot Program. The commenters state that the concept and service offered integrates greenhouse farmer training for disabled workers with training programs for solar installers, while also providing benefits in the form of increased farm owner income, clean energy, workforce development, and equity on residential electricity costs at the local community level. The commenters described their project design as providing any excess electricity that is not used by the greenhouses to local residents at a large discount and ask the Board for clarification to allow for this approach in its rules for the Pilot Program. While acknowledging that the concept has not yet been introduced in the United States and is in its infancy in Europe and Asia due to high financial barriers, the commenters note that they believe their partnership overcomes these high financial barriers. The commenters also offer their full support for the consideration of diversity and variety of project sizes and agricultural and horticultural production. (MASCEC-Tatleaux)

RESPONSE: The Board appreciates the commenters’ desire to promote diverse projects; however, the greenhouse farming proposed by the commenters does not comply with the Board’s rules or the statutory definition of a Dual-Use Solar Energy Project, which requires that the solar photovoltaic panels are “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 production.” P.L. 2021, c. 170 (N.J.S.A. 48:3-87 et seq.). The Board remains open to the commenters’ idea of combining solar development, agriculture, and workforce training, in a manner compliant with the Dual-Use Act and the Board’s rules, as part of the development and implementation of a permanent program. Finally, with respect to the commenters’ description of their project design to sell excess electricity not used by greenhouses to local residents, the Board notes that this construct is not part of the Board’s rules, which are based on the existing Successor Solar Incentive Program requirements.

##### N.J.A.C. 14:8-1.2 Definitions

6. COMMENT: The commenter requests that the Board revise the definition for “Dual-Use Solar Energy Project” to reflect the Dual-Use Act, N.J.S.A. 48:3-87.13.h, by replacing the word “use” with “production” in the last sentence, where the requirement for agricultural/horticultural activity is described. The commenter suggests that this revision would better ensure that land used for dual-use solar energy projects meets the qualification standards. (RC)

RESPONSE: The Board thanks Rate Counsel for its comment. While the Board believes that either term would effectuate the statutory intent, the Board agrees that the change is valid; the utilization of the word “use”

appears to have been a typographical error. As such, the Board has made the change to “production” at N.J.A.C. 14:8-1.2.

#### N.J.A.C. 14:8-13.3 Pilot Program Structure

7. COMMENT: As a safeguard for ratepayers, the commenter suggests that a cap be established for the dual-use incentive adder. If doing so hinders participation in the Pilot Program, the cap can be increased incrementally in future solicitations. (RC)

RESPONSE: The Board appreciates the commenter’s goal of minimizing the cost of the Pilot Program to the ratepayers. However, establishing a cap on incentive levels at this time would be premature. Dual-Use solar energy is a new technology in the State, and the Pilot Program is intended to gather the data needed to inform a permanent program.

8. COMMENT: The commenter recommends that the Board allow selected projects the ability to switch from their approved position in the Administratively Determined Incentive (ADI) Program or Competitive Solar Incentive (CSI) Program to the Remote Net Metering (RNM) market segment if the pathway is approved by the Board. (ForeFront Power)

RESPONSE: The notice of proposal indicated that the “updated RNM program” could be a potential pathway for Pilot Program projects. 56 N.J.R. 2271(a) at Summary. On December 18, 2024, the Board issued an Order establishing the new RNM market segment pursuant to the ADI Program. See *In the Matter of the Establishment of a Remote Net Metering Market Segment in the ADI Program and of an Application and Approval Process Pursuant to P.L. 2023, Chapter 190, Order Establishing Remote Net Metering Application and Approval Process*, BPU Docket No. QO24070554, Order dated December 18, 2024 (RNM Order). The Board had not yet ruled upon the eligibility of Pilot Program projects for the RNM market segment; nor did the RNM Order constitute Board authorization that the two programs are integrated. On February 17, 2025, the RNM market segment registration portal opened to new applications, but no further action had been taken by the Board to authorize Pilot Program projects as part of the process. Thus, at this time, the Board is not making any further changes upon adoption to specify a direct pathway for a Pilot Program project to apply or register in the RNM market segment. Given the nature of the Pilot Program, the Board continues to justify and support the ability to remain flexible in its position in establishing an RNM pathway for future solicitation rounds during a particular Program Year.

9. COMMENT: Two commenters encourage the Board to allow Pilot Program projects or projects in the future permanent program to be eligible for the Community Solar Energy Program (CSEP). One commenter describes a potential synergism between CSEP and the Pilot Program where the benefits of clean energy and electric bill savings can be distributed to low-to-moderate income residents in addition to farmers and landowners. (ForeFront Power and BlueWave)

RESPONSE: While the Board understands that dual-use solar energy projects are likely to have limited on-site load and the ability to combine these generation facilities with remote load as in CSEP would be welcome, the requirements of the two programs are not compatible. The New Jersey Legislature has capped CSEP projects at five MW but Pilot Program projects can exceed five MW up to 10 MW; further, CSEP does not allow projects proposed on open space or farmland.

#### N.J.A.C. 14:8-13.4 Pilot Program Capacity Targets and Limits

10. COMMENT: To avoid burdening ratepayers, the commenter advises against the Board’s exercise of its statutory authority to expand the Pilot Program’s 200 MW capacity by up to 100 MW if the Board chooses to extend the 36-month term of the Pilot Program by one or both of the 12-month extension periods. (RC)

RESPONSE: The Board appreciates the commenter’s concern for ratepayers. However, the Board believes that by providing the Board with the ability to extend the Pilot Program and to increase its capacity, N.J.S.A. 48:3-87.13.e, the Legislature has demonstrated its intent to balance incentivizing solar development with controlling the costs to the ratepayers, consistent with the legislative intent evidenced by the Solar Act of 2021, P.L. 2021, c. 169; that Act includes both incentives for solar development and caps on the cost to ratepayers. N.J.S.A. 48:3-115, 48:3-

87.d(2). The Board is mindful of the impact any increase in the Pilot Program’s capacity would have on ratepayers, and any expansion would include careful consideration of that impact.

11. COMMENT: The commenter opposes establishing capacity set-asides for specific project types, asserting that such set-asides can create market fragmentation, confusion about the goals of a program, and increased ratepayer costs. (RC)

RESPONSE: While appreciating commenter’s concern, the Board notes that the execution of the Pilot Program is intended to provide the Board with valuable lessons to inform a permanent program. The statute requires that the Board’s implementation of the Program results in a diversity of applications by size and type of agricultural and horticultural production. Additionally, criteria for project selection include proposals to minimize negative impacts to farmland, addressing stormwater and other environmental issues, and the quality of any research committed to during the evaluation period. The Board establishes annual capacity targets for particular project types to balance these objectives and believes that it would be premature at present to rule out the option of capacity set-asides.

#### N.J.A.C. 14:8-13.5 Pilot Program Eligibility

12. COMMENT: To prioritize cost efficiency in the selection of projects for the Pilot Program, the commenter recommends that the application scoring rubric prioritize projects with the lowest incentive amounts by weighting the category at 50 percent. (RC)

RESPONSE: The Board appreciates the commenter’s goal of keeping Program costs low. However, the Board declines to make any changes to the rules regarding assigning specific percentages or weights for scoring projects. The statute requires the Board to consider at least 12 other criteria in evaluating an application. See N.J.S.A. 48:3-87.13.c(1). The Board also refers the commenter to the Board’s companion proceeding, *In the Matter of the Dual-Use Solar Energy Pilot Program, Order Launching the Dual-Use Solar Energy Pilot Program*, Docket No. QO23090679, Order dated October 23, 2024, and corrected on January 2, 2025 (Dual-Use Solar Energy Pilot Program Order), in which further detail on the evaluation criteria and their relative weight is provided. Restricting the weight for an evaluation criterion to a specific percentage with no flexibility in the regulations does not provide the Board with the needed flexibility within the Pilot Program to make adjustments as needed for obtaining a wide range of projects to study. In order not to delay implementation of the Pilot Program and allow for needed flexibility in adjusting the appropriate weighting and scoring of criteria for applications per solicitation, the Board intends to approve the selection criteria for applications, including the weighing or scoring scheme, prior to the opening of an application period within the first solicitation round.

13. COMMENT: The commenter recommends broadening the scope of eligibility at N.J.A.C. 14:8-13.5(f) beyond new projects in the ADI and CSI programs to allow existing agrivoltaic projects that are affiliated with State or Federal governmental or educational institutions. In the commenter’s opinion, accepting such projects would contribute to the Pilot Program’s success without posing additional costs to ratepayers. (RC)

RESPONSE: The Board does not believe that the suggested change is necessary because the rules already allow existing projects in the ADI Program or CSI Program that have not yet commenced commercial construction by having obtained permission to operate from an electric distribution company (EDC) to participate in the Pilot Program; there is no need to specify associated affiliations in the rules. However, the Board agrees with the commenter that agrivoltaic projects affiliated with governmental or research institutions have the potential to significantly contribute to the Pilot Program and intends to evaluate lessons learned from any such project that results in “research studies on the efficacy of dual-use solar energy in New Jersey” for purposes of informing a permanent program as contemplated in the statute. N.J.S.A. 48:3-87.13.g.

14. COMMENT: The commenter supports the restriction at N.J.A.C. 14:8-13.5(i) on an EDC developing, owning, or operating projects in the Pilot Program and suggests extending this prohibition to all public utilities and their affiliates, employees, and immediate family members. (RC)

RESPONSE: The Board thanks the commenter for its support of the restriction on EDC ownership and operation in the Pilot Program, but

disagrees with expanding that prohibition to cover all public utilities and their affiliates, employees, and immediate family members. The existing restriction is based on the Board's desire to protect ratepayers by encouraging competitive applications from private developers rather than projects whose costs may be recovered through rates. The Board is not persuaded that the broader prohibition recommended by the commenter is necessary to promote this aim and believes it would be premature at this time.

#### N.J.A.C. 14:8-13.7 Pilot Program Solicitation Process

15. COMMENT: Three commenters recommended that the Board consider clarifications and revisions to the requirement for an Expression of Interest (EOI) to include a written lease agreement between the landowner, the solar operator, and the farmer, as applicable, as part of the application process at N.J.A.C. 14:8-13.7(a)3. Specifically, the commenters recommend that the Board allow a participant in the Pilot Program to demonstrate any form of site control; not merely a lease, but other documents, such as a lease option or other agreement. One commenter justifies this recommendation by stating that a long-term agreement, for instance, for more than one year, is unlikely to be tenable without confirmation of an approval for an incentive. The second recommendation is to allow a tenant farmer that is not the landowner to provide a form of legal agreement with the applicant—separate from the lease with the landowner—because using separate legally binding agreements between a developer, landowner, and tenant farmer is a best practice in the industry. (BlueWave, Lightstar, and ForeFront Power)

RESPONSE: The Board agrees with the commenters' recommendations. The primary intent of the Board's requirement is not to specifically set forth a standard for site control in agrivoltaics pursuant to the Pilot Program nor dictate the process for establishing written formal agreements. Rather, the Board's rules are intended to require evidence in written form to demonstrate that all parties of a project team have agreed upon the farmland proposed to serve as the location of a Pilot Program project, since there is a common understanding within the agricultural community that many of the agreements between farmers and landowners regarding farmland are verbal. The Board is, therefore, adding clarifying language at N.J.A.C. 14:8-13.7(a)3 to explicitly allow the submission of other legally binding, written agreements with the landowner as evidence of the formal relationship agreed upon between individual parties of a Pilot Program project team. Furthermore, the Board has provided clarity that the form of the written agreement(s) between the applicable parties of the project team may be determined by the project team.

16. COMMENT: The commenter supports requiring an initial deposit, included as a minimum requirement in the Notice of Incentive Availability (NOIA) issued by Board staff, and a second deposit upon project selection. In the commenter's opinion, an initial deposit would discourage uncommitted applicants, while a second deposit would help ensure that the applicant remains committed and has secured the necessary funds to move forward. (RC)

RESPONSE: While the Board appreciates and agrees with the rationale for requiring deposits as part of the Pilot Program application process, the Board believes that adding this requirement to the rules would not promote the optimum functioning of the Pilot Program. Instead, the Board believes that Board staff should have the flexibility to determine the need and establish the amount of application deposits and/or fees in each solicitation round. Thus, the Board declines to make the commenter's recommendation.

17. COMMENT: The commenter points out that the link to the U.S. Department of Energy's Low-Income Energy Affordability Data (LEAD) tool provided by Board staff in the EOI to determine whether the proposed project is located in an underserved community is broken. The commenter requests guidance on an alternative method to identify "underserved communities" as required at N.J.A.C. 14:8-13.7(g). (Renewable Properties)

RESPONSE: The Board refers the commenter to the Board's companion proceeding, specifically the Dual-Use Solar Energy Pilot Program Order at pages 25 and 26, in addition to Board staff's EOI Guidance document at page 6 (<https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance->

Jan\_2025%20v1\_1(1).pdf), which was revised by Board staff on February 6, 2025.

18. COMMENT: The commenter requests clarification on whether the estimate for the incentive adder provided in the EOI is considered binding. (Renewable Properties)

RESPONSE: The Board refers the commenter to the Board's companion proceeding, specifically the Dual-Use Solar Energy Pilot Program Order at pages 8 and 11, in addition to Board staff's NOIA at page 8 ([https://www.nj.gov/bpu/pdf/publicnotice/Notice\\_SolarIncentives\\_DualUsePilot.pdf](https://www.nj.gov/bpu/pdf/publicnotice/Notice_SolarIncentives_DualUsePilot.pdf)).

#### N.J.A.C. 14:8-13.9 Installation, Construction, and Operational Requirements

19. COMMENT: Two commenters recommend making changes to the requirements for the size of a research control area. Specifically, both commenters suggest implementing a general rule for 15 percent of the total project area to be considered for a research control area with a minimum and maximum size allowance for the research control area, where control areas can be half an acre at the smallest, and three acres at the largest. BlueWave suggests that making this change will accommodate smaller parcels of land and farming operations, while increasing the diversity of projects within the Pilot Program, and aligning with experts in the agrivoltaics field. Lightstar further commented that the proposed requirement for research control areas to be no less than 3.0 acres for projects greater than 3.0 acres in size is restricting to farmers, threatens the viability of mature dual-use projects due to land constraints, and is inconsistent with research practices from Rutgers University and the National Renewable Energy Lab (NREL). Lightstar also cited a specific case for a project whereby they state concerns that downsizing the project to accommodate the minimum 3.0 acres of land needed on a small plot would increase costs and decrease project viability and benefits to the landowner and farmer. (BlueWave and Lightstar)

RESPONSE: The Board appreciates the commenters' thoughtful feedback on the size of a research control area, but declines to make changes to the rules. The Board has evaluated various approaches on the size of a research control area and believes the approach proposed provides sufficient flexibility to participants in the Pilot Program while supporting valid research results that can inform the implementation of a permanent program. Furthermore, the Rutgers Agrivoltaics Program (RAP) was consulted on the size of the research control area, which was based on the acreage needed given their research projects, and supports the implementation of the size requirements along with the New Jersey Department of Agriculture.

The research requirements for the Dual-Use Solar Pilot Program, including the requirements for control area size, are less burdensome than those for the RAP. The Dual-Use Solar Pilot Program does not require the same replicated and randomized block design as the RAP research sites. The programs share a responsibility to learn how agrivoltaics might be useful in New Jersey, but the specific goals of each program are not identical. Thus, the size of the research control area in the Board's Pilot Program is consistent with the research being conducted by Rutgers University on agrivoltaics, though it need not strictly be. Similarly, NREL's research practices have a different, though similar, purpose of establishing agrivoltaics in the industry, but the Board is not required to strictly follow the same structure for research as NREL. Moreover, on page 37 of NREL's report dated August 2022, entitled, *The 5Cs of Agrivoltaic Success Factors in the United States: Lessons from the InSPIRE Research Study*, NREL states that "[c]ontrol plots should be as large as the core research plots whenever possible, although commercial solar project site land availability can lead to smaller control plots on the same property." The overall goal of the research in the Pilot Program is to provide accurate estimates of farm productivity with and without agrivoltaic arrays installed—in order to do so, an adequate size of land is needed to evaluate the impacts in a non-biased and scientific manner. The Board's rules reflect what it believes makes sense for projects in New Jersey in order to balance the benefits of agrivoltaics with their potential impacts to existing farms.

In response to the comment made citing an example of a project whereby the minimum acreage needed to satisfy the Board's rules would be a concern, the Board declines to make any further change to the rules

for this specific case. This comment is likely more about the developer and landowner wanting to maximize solar coverage, not a critique from the farmer, who might prefer to farm a research control area; Board staff notes that the research control area will not be encumbered by solar panels. Thus, the research control area will not be taking three acres out of production. The farmer will have three additional acres of land to farm.

20. COMMENT: The commenters request that the research control area and required fencing be allowed to be located in the buffer and/or setback areas of a parcel. (Bluewave and Lightstar)

RESPONSE: The Board declines to make any changes to the research control area rules based on the comments. The Board does not have jurisdiction over requirements implemented pursuant to New Jersey's Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq. Specifically, buffers and setbacks are implemented by individual municipalities in accordance with the MLUL.

#### N.J.A.C. 14:8-13.10 Monitoring and Research Requirements

21. COMMENT: The commenter recommends that the Board be as transparent as possible with the information collected as research pursuant to this section and make the information publicly available, specifically with regard to agronomic aspects. The commenter states that it understands the Board's responsibility in maintaining confidentiality for certain aspects of the information, but that apart from the technical aspects of an agrivoltaic equipment design or operation, the commenter is not familiar with the reasons that stakeholders may request confidentiality. As an alternative, the commenter suggests that the Board's designee could compile the agronomic data from each project into a project-specific report and offers to share a compilation of agronomic studies on agrivoltaics with the Board's designee, if desired. (VAAFM)

RESPONSE: The Board thanks the commenter for their support of the Pilot Program. The Board appreciates the commenter's concern for transparency in research requirements and notes that certain research data collected by RAP will be made public as part of the implementation of the Pilot Program. Further detail on this data will be available on the Board's Clean Energy website (at <https://njcleanenergy.com/>) in the future.

22. COMMENT: The commenter asks for clarity regarding what farmers can expect from Rutgers University's participation in research. Details were requested on how Rutgers plans to work with farmers and at what point throughout the EOI, application, or award process the contract must be signed. (Lightstar)

RESPONSE: The Board refers the commenter to the Board's companion proceeding, specifically the Dual-Use Solar Energy Pilot Program Order starting at page 23 in addition to Board staff's NOIA at page 7 ([https://www.nj.gov/bpu/pdf/publicnotice/Notice\\_SolarIncentives\\_DualUsePilot.pdf](https://www.nj.gov/bpu/pdf/publicnotice/Notice_SolarIncentives_DualUsePilot.pdf)), Board staff's EOI Guidance document at page 11 ([https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan\\_2025%20v1\\_1\(1\).pdf](https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan_2025%20v1_1(1).pdf)), and Frequently Asked Questions available at <https://www.njcleanenergy.com/renewable-energy/programs/dual-use-solar-pilot-program>.

23. COMMENT: The commenter believes additional guidance is needed on program requirements as they relate to research expectations. Specifically, the commenter points out that applicants are expected to provide detailed research plans in the EOI prior to contracting RAP or another New Jersey public institution of higher education to design the studies following Board approval. The commenter requests guidance for ensuring that their research plan meets the requirements without excessive speculation. The commenter suggests that there is an indication that early partnership with a non-Board appointed entity, at cost to the developer, will receive higher preference in the EOI evaluation. The commenter also requests that the Board indicate what data will be required regarding non-Board-appointed entities for submission of the application as they connect with institutions to develop the research plan. Finally, the commenter acknowledges that the research items at A through M of Appendix B of the Board's Order launching the Pilot Program are the project team's responsibility to execute but asks whether RAP can support in developing the research plan. (Renewable Properties)

RESPONSE: The Board refers the commenter to the Board's companion proceeding, specifically the Dual-Use Solar Energy Pilot Program Order starting at page 23 in addition to Board staff's NOIA at page 7 ([https://www.nj.gov/bpu/pdf/publicnotice/Notice\\_SolarIncentives\\_DualUsePilot.pdf](https://www.nj.gov/bpu/pdf/publicnotice/Notice_SolarIncentives_DualUsePilot.pdf)), Board staff's EOI Guidance document at page 11 ([https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan\\_2025%20v1\\_1\(1\).pdf](https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan_2025%20v1_1(1).pdf)), and Frequently Asked Questions available at <https://www.njcleanenergy.com/renewable-energy/programs/dual-use-solar-pilot-program>.

ives\_DualUsePilot.pdf), Board staff's EOI Guidance document at page 11 ([https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan\\_2025%20v1\\_1\(1\).pdf](https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan_2025%20v1_1(1).pdf)), and Frequently Asked Questions available at <https://www.njcleanenergy.com/renewable-energy/programs/dual-use-solar-pilot-program>.

24. COMMENT: The commenter requests clarification on Rutgers' participation in the research specific to the Board's Order dated October 23, 2024. (ForeFront Power)

RESPONSE: The Board refers the commenter to the Board's companion proceeding, specifically the Dual-Use Solar Energy Pilot Program Order starting at page 23, in addition to the Board staff's NOIA at page 7 ([https://www.nj.gov/bpu/pdf/publicnotice/Notice\\_SolarIncentives\\_DualUsePilot.pdf](https://www.nj.gov/bpu/pdf/publicnotice/Notice_SolarIncentives_DualUsePilot.pdf)), Board staff's EOI Guidance document at page 11 ([https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan\\_2025%20v1\\_1\(1\).pdf](https://njcleanenergy.com/files/file/Dual-Use%20Pilot%20Program/Dual-Use%20Pilot%20EOI%20Guidance-Jan_2025%20v1_1(1).pdf)), and Frequently Asked Questions available at <https://www.njcleanenergy.com/renewable-energy/programs/dual-use-solar-pilot-program>.

#### N.J.A.C. 14:8-13.13 Reporting and Recordkeeping

25. COMMENT: To avoid jeopardizing financial or proprietary information, the commenter requests that application materials like the Construction, Operations, Monitoring, and Project Research Plan (COMPR) be redacted or made confidential prior to being posted publicly by the Board. (BlueWave)

RESPONSE: The Board declines to make any changes to the rules based on BlueWave's comment because the Board has rules covering confidentiality procedures at N.J.A.C. 14:1-12 that adequately address the commenter's concern. In general, commenters and other persons doing business with the Board may identify information that they seek to keep confidential by following these existing Board rules. Further details regarding confidentiality of information submitted in the Pilot Program may be provided through a Board order as part of a future solicitation process.

#### Summary of Agency-Initiated Changes:

At N.J.A.C. 14:8-13.2, the Board is revising the definition of "equity" to remove the reference to Federal Executive Order No. 13985 of Jan. 20, 2021 (On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) because it was rescinded by Federal Executive Order No. 14151 of January 20, 2025 (Ending Radical and Wasteful Government DEI Programs and Preferencing). Removing the reference to the Federal source does not change the meaning of the originally proposed definition, nor does it change the implementation of evaluating projects in the Pilot Program based on a project's proximity to underserved communities. The Board is also clarifying the definition of "application period" to state that an application period will commence upon an opening date and close on a subsequent date and time, each specified by Board order. This change does not alter the three-year term of the Pilot Program. The Board is clarifying the definition of "Program Year" or "PY" to state expressly that PY duration may be modified by Board order.

The Board is revising the language at N.J.A.C. 14:8-13.3(a) to clarify that Program Year 1 shall open with the Board order that opens the Pilot Program and last for 12 months thereafter, unless otherwise specified in a Board order and that subsequent Program Years shall begin at the completion of the previous Program Year. These changes are intended to allow for flexibility through a Board order for the start date of the program and for the length of the Program Year in the event that additional time beyond 12 months is needed, but do not alter the general structure of the Pilot Program or its three-year term.

At N.J.A.C. 14:8-13.7(b), the Board is replacing the phrase "application round" with "application period" to correct an error. Making this correction ensures that the correct terminology is used throughout the rules to avoid confusion.

The Board is clarifying the language at N.J.A.C. 14:8-13.7(e). As proposed, the provision indicated that the Board would establish the application forms themselves. As revised, the language reflects the Board's intention that the Board may establish adjustments to the application criteria, and staff will prepare the necessary application forms based on the established criteria. In accordance with the change to the

language at N.J.A.C. 14:8-13.7(e), the Board is clarifying the language at N.J.A.C. 14:8-13.7(i) to refer to the application form only, rather than an application form approved by the Board. The Board is also clarifying the language at N.J.A.C. 14:8-13.10(n) regarding an annual survey to be completed by Program participants. The Board notes that requiring Board approval for the application form and annual survey constituted an error in the published notice of proposal. This level of review is not needed for implementing these aspects of the Pilot Program; the appropriate level of review is Board staff. The changes to these subsections reflect the Board's intent to maintain consistency in the implementation of the Board's programs while increasing the efficiency in responding to programmatic needs, such as forms. These changes do not alter the requirements of the Program for participants.

The Board is making a change to clarify proposed N.J.A.C. 14:8-13.9(a)2, in consultation with the State Agriculture Development Committee (SADC), to remove the reference to N.J.A.C. 2:76-2A.13, Agricultural management practice (AMP) for on-farm direct marketing facilities, activities, and events. The AMP referenced at N.J.A.C. 2:76-2A.13 was incorrectly added and would not be applicable for the Pilot Program. In contrast, the AMP referenced at N.J.A.C. 2:76-2A.12 (applicable to solar on all commercial farms), Agricultural management practice for the construction, installation, operation, or maintenance of solar energy generation facilities, structures, and equipment on commercial farms, has many applicable requirements. This AMP does contain some elements that would not apply to agrivoltaic projects, and the SADC may need to develop an AMP specific to agrivoltaics in the future.

The Board is also clarifying proposed N.J.A.C. 14:8-13.9(e)5 to include "balance of system equipment" to describe the parts of the solar generation system covered in this subsection within the area of land designated for a solar array. A solar energy system generally consists of components in addition to the solar panels in order for the system to function and includes ancillary equipment, facilities, and structures, such as inverters, a control panel, wiring, battery storage, etc. This ancillary equipment is also referred to as "balance of system." Rather than using the defined term "Dual-Use Solar Energy Project" that also communicates the same meaning, the language at subsection (e) was drafted to avoid any confusion between land containing only the solar array and associated equipment for the solar energy facility and the area of land designated for research, or the research control area, which is without the solar panels, or solar array.

Finally, the Board believes that it is necessary to incorporate more flexibility at proposed N.J.A.C. 14:8-13.13(g)1 to allow for another type of project number designation or identification in addition to a docket number. In other words, the Board may choose to have a different mechanism to track applications than the docket numbers assigned by its docketing system.

#### 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 adopted amendments and new rules.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[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]\* **\*production\***.

...

#### 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 order\***.

"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\*, **unless otherwise specified within the Board order,\*** 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]\* **\*the Board order that opens the Pilot Program\*** and last for 12 months thereafter\*, **unless otherwise specified within a Board order\***. 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]\* **\*January 5, 2029\***, at the conclusion of PY3, or no later than \*[48 or 60 months after the effective date of this rulemaking]\* **\*January 5, 2030 or January 5, 2031\***, 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) (Reserved.)

(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. (Reserved.)

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 **\*or other legally binding agreement(s)\*** between the landowner, the solar operator, and the farmer, as applicable. If applicable, **\*[the]\* \*a\* lease agreement \*, or other form of written and legally binding agreement(s) as determined by the project team,\*** must be effective for a minimum of three years and any changes to **\*[the lease]\* \*a written and legally binding\*** 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]\* \*period\***. 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]\* **\*any adjustments to the\*** application **\*criteria\*** 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. (Reserved.)

(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 **\*or balance of system equipment\***. 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 **\*or balance of system equipment\***.

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 **\*or balance of system equipment\***.

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)-(n)]\* **(d) through (j), (m), and (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 unpreserved 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)-(c) (Reserved.)

(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)-(l) (Reserved.)

(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 **\*developed and approved by Board staff\***, 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. (Reserved.)

(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 **\*designated project identification, such as a\* docket number\*,\* assigned to the selected project's application.**

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.

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.

## (a)

### BOARD OF PUBLIC UTILITIES

#### Renewable Energy and Energy Efficiency

#### Adopted Amendments: N.J.A.C. 14:8-5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, and 5.12

#### Adopted New Rule: N.J.A.C. 14:8-5.13

Proposed: June 3, 2024, at 56 N.J.R. 993(a).

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments: July 7, 2025, at 57 N.J.R. 1367(a).

Adopted: November 21, 2025, by the New Jersey Board of Public Utilities, Christine Guhl-Sadovy, President, Dr. Zenon Christodoulou, Ph.D., and Michael Bange, Commissioners.

Filed: November 28, 2025, as R.2026 d.010, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-10 and with **non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13 and 48:3-87.

BU Docket Number: QO21010085.

Effective Date: January 5, 2026.

Expiration Date: February 27, 2026.

#### Summary of Public Comments and Agency Responses:

Written comments on the original notice of proposal were received from: Atlantic City Electric Company (ACE); Coalition for Community Solar Access (CCSA); Environmental Defense Fund (EDF); Interstate Renewable Energy Council (IREC); Jersey Central Power & Light Company (JCP&L); NAIOP New Jersey the Commercial Real Estate Association (NAIOP); New Jersey Division of Rate Counsel (DRC); New Jersey Utilities Association (NJUA); Piq Energy; Powerflex Inc. (Powerflex); Public Service Electric and Gas Company (PSE&G), Robert Erickson; Rockland Electric Company (RECO); Solar Landscape; and Sunnova Energy International (Sunnova).

Written comments on the notice of proposed substantial changes upon adoption to proposed amendments were received from: ACE; CCSA; IREC; JCP&L; DRC; NJUA; PSE&G; RECO; and Solar Landscape.

#### 1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal upon Adoption

### SUBCHAPTER 4. NET METERING FOR CLASS I RENEWABLE ENERGY SYSTEMS

#### N.J.A.C. 14:8-4.2 Interconnection Definitions

1. COMMENT: The commenter states that the definition of "customer generator" can be interpreted as excluding community solar projects that do not generate electricity on the customer's side of the meter. The definition should be revised to explicitly include community solar projects. (CCSA)

2. COMMENT: The commenter recommends that the Board of Public Utilities ("Board" or "BPU") clarify the proposed definition of "customer-generator" to include community solar projects. (Solar Landscape)

RESPONSE TO COMMENTS 1 AND 2: The Board appreciates the commenters pointing out this exclusion, as it was not the intent of the rulemaking. The Board encourages the commenters to refer to the new definitions of "customer-generator" and "customer-generator facility," which the Board is adding at N.J.A.C. 14:8-5.1. The definitions include systems of all sizes, located either in front of or behind the meter, including community solar projects.