



Criterion 9(F) Procedure Statement

State of Vermont

Natural Resources Board

1. Purpose

The Natural Resources Board adopts this procedure to provide consistency and certainty to the review of Act 250 applications under criterion 9(F). 10 V.S.A. § 6086(a)(9)(F).

This Procedure supersedes all previous procedures regarding criterion 9(F).

2. Statutory Provisions

Statutory provisions regarding the energy conservation criterion (9(F)) are found at 10 V.S.A. § 6086(a)(9)(F) and 30 V.S.A. §§ 51 and 53.

Criterion 9(F) provides:

A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. § 51 or 53.

This procedure concerns an applicant's compliance with the referenced building energy standards.

3. Evidence of Compliance

a) *Residential Buildings*

Pursuant to 10 V.S.A. § 6086(a)(9)(F) an applicant seeking an affirmative finding under criterion 9(F) shall provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. § 51. Pursuant to 30 V.S.A. § 51(e), substantial and reliable evidence of compliance with the Residential Building Energy Standards (RBES) and the RBES Stretch Code established under 30 V.S.A. § 51, serves as a presumption of compliance with criterion 9(F).



To satisfy this presumption, applicants shall certify through the Act 250 Application, Schedule B, that the residential building will meet the RBES and corresponding RBES Stretch Code in effect at the time a complete Act 250 application to construct a residential building (or buildings) is filed with the appropriate District Commission or the Natural Resources Board.

30 V.S.A. § 51(c)(2) states:

Each time the RBES are amended by the Commissioner, the amended RBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. Persons commencing residential construction before the effective date of the amended RBES shall have the option of complying with the applicable provisions of the earlier or the amended RBES. After the effective date of the original or the amended RBES, any person commencing residential construction shall comply with the most recent version of the RBES.

Should the Department of Public Service amend the RBES or corresponding RBES Stretch Code while an Act 250 application is pending, the Commission should evaluate the likelihood that it will issue its decision, and if a permit is issued, the likelihood that construction of the project will commence prior to the effective date of the amended RBES or corresponding RBES Stretch Code. If the Commission determines that it is likely that it will issue its decision, and that construction of the project will commence prior to the effective date of the amended RBES or corresponding RBES Stretch Code, then the Commission should, through an Act 250 Rule 20 request for additional information if necessary, ask the applicant whether, pursuant to 30 VSA 51(c)(2), it intends to comply with the earlier, or with the amended, RBES or RBES Stretch Code. The Commission should then complete its evaluation of the application under Criterion 9(F) according to the elected version of the code. If the Commission determines that it is likely that it will issue its decision, and if the applicant indicates that construction of the project will commence after the effective date of the amended RBES or corresponding RBES Stretch Code, then the Commission should, through an Act 250 Rule 20 request for additional information if necessary, ask the applicant to demonstrate how it will comply with the amended version of the code. The Commission should then complete its evaluation of the application under Criterion 9(F) according to the amended version of the code.

Should the Department of Public of Service amend the RBES or corresponding RBES Stretch Code after an Act 250 permit has been issued, but prior to the commencement of

construction of the permitted residential project, permittees are advised that any changes to the project which are necessary to comply with the amended code pursuant to 30 VSA 51(c)(2) may constitute a "material change" under Act 250 Rule 2(C)(6). As such, permittees are advised to seek a jurisdictional opinion from the District Coordinator about whether a permit amendment is needed to incorporate those changes. The failure to obtain all necessary permit amendments could result in an administrative enforcement action pursuant to 10 VSA Ch. 201.

Upon completion of each building and prior to occupancy, the applicant shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 VSA 51(f).

b) Commercial Buildings

Pursuant to 10 V.S.A. § 6086(a)(9)(F) an applicant seeking an affirmative finding under criterion 9(F) shall provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. § 53. However, compliance with 30 V.S.A. § 53 shall not serve as a presumption with respect to commercial buildings.

Applicants shall:

Certify, through the Act 250 Application, Schedule B, that the building will meet the CBES as developed by the Department of Public Service in effect at the time a complete Act 250 application to construct a commercial building (or buildings) is filed with the appropriate District Commission or the Natural Resources Board.

In addition, upon completion of the construction of each building and prior to occupancy, the applicant shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).

Adopted and Approved by the Natural Resources Board: July 28, 2020.

Effective: September 1, 2020