



# **National Fenestration Rating Council Incorporated**

**NFRC 707-2009 [E0A0]**

**Compliance and Monitoring Program Manual**

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## ***FOREWORD***

The National Fenestration Rating Council, Incorporated ("NFRC") has developed and operates a uniform national rating system for energy performance of fenestration products. The Rating System determines the U-factor, Solar Heat Gain Coefficient (SHGC) and Visible Transmittance (VT) of a product, which are mandatory ratings for labeling NFRC certified products, and are supplemented by procedures for voluntary ratings of products for Air Leakage (AL), and Condensation Resistance (CR). Together, these rating procedures, as set forth in documents published by NFRC, are known as the NFRC Rating System.

The Rating System employs computer simulation and physical testing by NFRC-accredited laboratories to establish energy performance ratings for fenestration product types. The Rating System is reinforced by a certification program under which NFRC-licensed responsible parties claiming NFRC product certification shall label and certify fenestration products to indicate those energy performance ratings, provided the ratings are authorized for certification by an NFRC-licensed certification and inspection agency (IA). The requirements of the rating, certification, and labeling program (the "Certification Program") are set forth in the NFRC PCP Product Certification Program (most recent version), as amended, updated or interpreted from time to time (the "PCP"). Through the Certification Program and its companion laboratory accreditation program (the "Accreditation Program") , set forth in this NFRC LAP Laboratory Accreditation Program, as amended, updated or interpreted from time to time (the "LAP"), and IA licensing program (the "IA Program"), set forth in NFRC CAP-Certification Agency Program (most recent version), as amended, updated or interpreted from time to time (the "CAP"), NFRC intends to ensure the integrity and uniformity of NFRC ratings, certification, and labeling by ensuring that responsible parties, testing and simulation laboratories, and IAs adhere to strict NFRC requirements.

In order to participate in the Certification Program, a manufacturer/responsible party shall rate a product to be certified for mandatory NFRC rating procedures. At present, a manufacturer/responsible party may elect to rate products for U-factor, Solar Heat Gain Coefficient (SHGC), Visible Transmittance (VT), Air Leakage, Condensation Resistance, or any other procedure adopted by NFRC, and to include those ratings on the NFRC temporary label affixed to its products (or the NFRC Label Certificate). U-factor, SHGC and VT, Air Leakage, and Condensation Resistance rating reports shall be obtained from a laboratory, which has been accredited by NFRC in accordance with the requirements of the LAP. The rating shall then be reviewed by an Independent Inspection and Certification

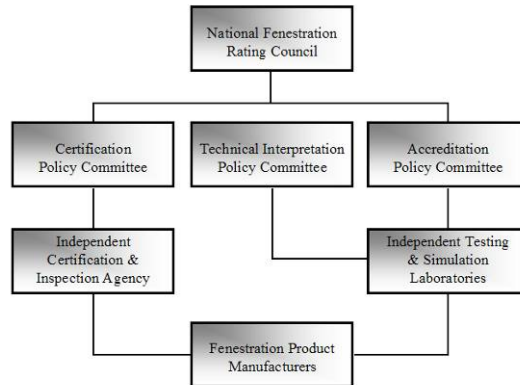
Agency (IA) which has been licensed by NFRC in accordance with the requirements of the CAP. NFRC-licensed IAs also review label format and content, conduct in-plant inspections for quality assurance in accordance with the requirements of the CAP, and issue a product certification authorization report (CAR), or an NFRC Label Certificate for site-built products and attachment products. The IA is also responsible for the investigation of potential violations (prohibited activities) as set forth in the NFRC Compliance and Monitoring Program.

Products that are labeled with the NFRC Temporary and Permanent Label, in accordance with NFRC requirements, are considered to be NFRC-certified. NFRC maintains a Certified Products Directory, listing product lines and individual products selected by the manufacturer/responsible party for which product certification authorization has been granted.

NFRC manages the Rating System and regulates the Product Certification Program (PCP), Laboratory Accreditation Program (LAP) and Certification Agency Program (CAP) in accordance with the PCP, the LAP, and the CAP procedures, and conducts compliance activities under all these programs as well as the Compliance and Monitoring Program. NFRC continues to develop the Rating System and each of the programs.

NFRC owns all rights in and to each of the PCP, LAP, CAP, Compliance and Monitoring Program, and each procedure, which is a component of the Rating System, as well as each of its registration marks, trade names, and other intellectual property.

**Figure 1**



Questions on the use of this procedure should be addressed to:

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## 1. Findings

A. The Board of Directors of the National Fenestration Rating Council, Incorporated (NFRC™) makes the following findings:

- NFRC is the subject of a Congressional mandate to assist the U.S. Department of Energy and the U. S. Federal Trade Commission in establishing a voluntary national system of rating fenestration products for energy efficiency and other performance attributes.
- NFRC's mission as set forth in both its Articles of Incorporation and Bylaws and as approved by its founders is:

*“To establish and administer a fair and credible system to rate energy performance and other performance attributes of fenestration products and to coordinate the uniform application of a certification and labeling process consistent with that rating system.”*

- Federal law and the laws of most states prohibit deceptive trade practices and provide for the protection of consumers from practices such as misrepresentation as to the quality or standard of a good or service.
- NFRC has rights under trademark and copyright law to protect its registered certification mark and related trade and service marks and logo. Further, NFRC has the right to protect its publications, and as a matter of contract law, has the right to provide for remedies for breach of contract by NFRC program participants who are parties to licensing agreements with NFRC (manufacturers, lineal suppliers, fabricators, site-built licensees, and other such responsible parties), including, NFRC-accredited testing and simulation laboratories, and NFRC-licensed independent certification and inspection agencies (IAs).
- Infringement of NFRC's rights creates costs to NFRC indirectly by impairing the value of NFRC's marks and directly by causing NFRC to expend staff resources and incur other legal expenses in connection with efforts to prevent such infringement.
- NFRC must implement a means of securing a remedy that is prompt, enforceable and efficient to assure its registered certification mark, related marks and logo, as well as its copyrights are protected, and that participants adhere to NFRC's program requirements, and compensate NFRC for expenses incurred in connection with the enforcement of its rights and compliance with its obligations under federal and state law.

## 2. Legal Authority for Compliance and Monitoring Program

A. NFRC has legal rights as a matter of statutory and common law. NFRC has the right to assert these rights in legal actions against persons who impair those rights. These rights generally fall in the following categories of law:

- Contract law

- Consumer protection law, including statutory prohibitions against deceptive trade practices
- Trademark law
- Copyright law

### **3. Establishment of Compliance and Monitoring Program**

In order to meet NFRC's obligations and duties under its programs and under law and to protect NFRC's legal rights, NFRC has established a program for monitoring activity, and a set of fines and/or sanctions applicable to certain activities as set forth in Section IV, that are prohibited by law or by contract.

**A.** NFRC program participants who have license agreements with NFRC have contractually agreed to comply with the obligations of the Compliance and Monitoring Program, including payment of fines and compliance with remedial action imposed under this program.

**B.** NFRC seeks to have parties who are not NFRC licensees voluntarily comply with the fines and remedial actions prescribed under the Program. However, NFRC retains its rights under federal and state laws to seek damages and injunctive relief against any violator of NFRC's certification mark and related marks and copyrights. Therefore, NFRC will have the right to pursue the legal remedies available to it under applicable federal and state laws, against NFRC licensees and non-licensees who violate NFRC's marks and copyrights.

### **4. Monitoring Program**

NFRC shall be responsible for monitoring licensed program participants to ensure that program requirements are met. This responsibility may be fulfilled through among other measures, inspections initiated by NFRC staff, NFRC-licensed IA's, contractors, and requests/comments from other stakeholders (code officials, etc.) as deemed appropriate by NFRC. If NFRC has knowledge or notice of a possible activity that may be prohibited under Section VI below (a "Prohibited Activity"), NFRC shall comply with the procedures set forth in Section VIII below.

### **5. Response to Building Officials**

Because NFRC labels are an essential component of energy code enforcement, Building Officials rely on NFRC when issues come up during the construction process. Recognizing the importance of responding to project-specific questions and issues from Building Officials in a timely manner, NFRC will take appropriate steps to respond to and cooperate with Building Officials, including the following:

**A.** NFRC will provide a one-page form to the Building Official to complete and submit a request for NFRC action regarding potential violations at a specific building project.

**B.** Upon receipt of the form, NFRC staff will oversee the investigation of the possible prohibited activity in a timely manner and according to Section IV.

**6. Fines and Remedial Actions for Prohibited Activities**

**A.** NFRC shall impose a fine against any individual or entity found to have engaged in an activity prohibited in this section in the corresponding amount set forth (see Table 1).

1. The fine shall consist of the sum of two components: a fine per “product line” plus a fine per “product” involved.
2. The fine specified shall be imposed for each incidence of a Prohibited Activity. At the sole discretion of the NFRC Executive Director, NFRC may continue to impose the specified fine for all or some of the number of days thereafter that the Prohibited Activity continues and, in the case of a Prohibited Activity that occurs at more than one location, for some or all of the locations where the Prohibited Activity occurs.
3. The NFRC Executive Director shall have the right, in his/her sole discretion, to assess the specified fine for a single product or to increase the fine for egregious circumstances.

**B.** Prohibited Activity shall be deemed to continue to occur until the remedial action required pursuant to Section VII has been taken. The fine imposed shall continue to accrue until the “Required Remedial Action” has been taken.

**C.** Any fine imposed shall be paid by the individual or entity subject to such fine no later than twenty (20) days after the date notification of the fine assessment is sent by NFRC to the program participant, or if that program participant has appealed the NFRC decision to the Executive Committee as described in Section VIII E. below, within ten (10) days after it is notified of the decision by the Executive Committee.

**D.** The following are “Prohibited Activities,” the “Fine” applicable to each prohibited activity, and the “Required Remedial Action:”

(Table 1)

Prohibited Activity	Fine <sup>1</sup>	Required Remedial Action <sup>2</sup> (see Legend –Sec. VII)
<b>1. Labeling<sup>3</sup></b>		
a. Non-Compliant Labels		
(i) Use of a non-compliant label on a product for which product certification authorization has been granted	\$5,000/ product line PLUS \$100/product	(A)
b. Improper Labeling and Advertising		
(i) Use of a NFRC label, whether or not compliant, on a product without a signed license agreement with NFRC	\$5,000/ product line PLUS \$100/product	(A)
(ii) Affixing a NFRC label to a product for which product certification authorization has not been granted	\$5,000/ product line PLUS \$100/product	(A)
(iii) Use of a NFRC label that misstates a NFRC performance rating	\$5,000/ product line PLUS \$100/product	(A)
(iv) Use of an NFRC label, whether or not compliant, in advertising not approved by NFRC in accordance with the Product Certification Program (PCP)	\$5,000/ product line PLUS \$100/product	(B)
(v) Reuse of a NFRC temporary label on any product	\$5,000/ product line PLUS \$100/product	(C)
(vi) Advertising a product as "NFRC-certified" when the product has not been granted product certification authorization or does not bear a NFRC label	\$5,000/ product line PLUS \$100/product	(B)
(vii) Failure to label a product with both required NFRC labels (temporary or permanent)	\$5,000/ product line PLUS \$100/product	(A)
Prohibited Activity	Fine	Required Remedial Action (see Legend –Sec. VII)

<sup>1</sup> Each category of prohibited activity is subject to a maximum fine of \$200,000.

<sup>2</sup> All “Required Remedial Action” taken may be subject to in-person inspection by NFRC staff, contractors, IAs, testing or simulation labs, or is required to be verified by written affidavit or video image depicting the required remedial action taken.

<sup>3</sup> Or Label Certificate.

<b>2. NFRC Programs</b>		
(i) Stating that a manufacturer/responsible party is a licensed participant in the PCP when such is not the case.	\$3,000	(B)
(ii) Stating that a product is NFRC-certified when such is not the case.	\$3,000	(B)
(iii) Stating that a laboratory is accredited by the NFRC Laboratory Accreditation Program (LAP) when such is not the case.	\$2,000	(D)
(iv) Stating that a person or entity is licensed by the NFRC Certification Agency Program (CAP) when such is not the case.	\$2,000	(D)
(v) Failure to comply with CAP requirements by NFRC-licensed IA	\$500	(E)
(vi) Failure to comply with LAP requirements by NFRC-accredited laboratories.	\$500	(E)
<b>3. NFRC Certification Mark/Membership Mark</b>		
(i) Use of any NFRC mark without a signed license agreement or written permission.	\$5,000	(F)
<b>4. NFRC Directory</b>		
(i) Reproduction in any form or medium of all or part of the information contained in the NFRC Certified Products Directory without the prior written permission of NFRC.	\$5,000	(G)
(ii) Producing a facsimile of the NFRC Certified Products Directory or information derived from there without the prior written permission of NFRC.	\$5,000	(G)

**7. Legend: Required Remedial Action**

**A.** Cease placing non-compliant labels on the manufacturer's product. Licensed manufacturers must immediately replace non-compliant labels with compliant labels on all units of the product whether in manufacturer's warehouse, or in manufacturers wholesale or retail distribution system.

**B.** Immediately cease advertising or other publication. Licensee may then seek to obtain NFRC's permission to use the NFRC label in advertising. A non-licensee shall publish a retraction of the claims made in the advertising or other publication in the next issue of each publication or in other media where it wrongfully used the NFRC non-compliant label.

**C.** Cease placing re-used NFRC labels on the product and replace such labels with new labels on all units of the product whether located at the manufacturer's warehouse or wholesale or retail distribution system.

- D. Cease making the misleading statement.
- E. Comply with the applicable requirement.
- F. Cease using the NFRC certification mark, related trade and service marks, and logo.
- G. Cease using the information; withdraw any product using the information from the marketplace; cease distribution of any such product; recover all copies of such information previously distributed and deliver them to NFRC.

**8. Determination to Assess Fine and Require Remedial Action**

**A.** The determination of whether a program participant has engaged in a Prohibited Activity and the fine or other remedy to be imposed on the program participant shall be made by NFRC in accordance with the following process:

**B.** A finding that a Prohibited Activity has occurred shall be based on reasonable evidence of that activity. NFRC shall have the right to conduct such inquiries and gather such evidence as it believes may be necessary to determine whether a Prohibited Activity has occurred or is occurring. NFRC may also utilize staff, IA's, contractors, public websites, and other proper means to gather information and evidence related to the possible Prohibited Activity. NFRC may also seek information from the party who may be involved in the potential Prohibited Activity and NFRC program participants shall be obligated to provide such information as NFRC staff may reasonably request in connection with such an inquiry. The program participant shall have the right to present to NFRC any information it deems relevant to NFRC's determination of whether it engaged in a Prohibited Activity.

**C.** The information and evidence gathered by NFRC staff, including any information provided by the program participant, shall be reviewed by the NFRC Program Administrator and staff to determine if there is a sufficient basis to conclude that a program participant has engaged in a Prohibited Activity. As part of that process, NFRC staff shall consult with NFRC legal counsel for input on any legal issues relating to the matter. Based on that information, the NFRC Executive Director shall make a determination whether the program participant has engaged in a Prohibited Activity and the appropriate fine and/or other remedial action to be required of that program participant.

**D.** If the NFRC Executive Director concludes a Prohibited Activity has occurred, the NFRC Program Administrator or other NFRC representative shall then notify the program participant in writing of that finding in accordance of Section IX below. That notice will summarize any material non-confidential information relied upon by NFRC to reach that finding and the proposed fine or other remedial action to be imposed by NFRC on the program participant. The program participant shall also be advised that it may ask the Executive Committee of NFRC's Board to reconsider NFRC's finding of a Prohibited Activity and/or of the fine or other remedy imposed on that program participant. Any request for reconsideration shall be made in writing by the program participant to NFRC's Program Administrator within twenty (20) days of its receipt of the foregoing notice from NFRC. All such requests shall be in writing and shall provide a detailed explanation by the program participant of the reasons for its disagreement

with NFRC's decision. The program participant may also submit any other information it believes supports its request for reconsideration. Pending the Executive Committee's determination of the request for reconsideration, the fine or other remedy imposed by NFRC shall be held in abeyance.

**E.** The written request for reconsideration shall then be forwarded by the Program Administrator to the NFRC Executive Committee along with the information relating to the matter that was obtained by NFRC. The Executive Committee shall then review the program participant's request and the relevant information and may request NFRC staff to provide additional information. The Executive Committee shall then determine whether to confirm, modify or reverse the decision made by NFRC and the program participant shall be promptly advised in writing of the decision of the Executive Committee in accordance with Section IX below. The decision of the Executive Committee shall be final and not subject to further appeals.

**F.** NFRC staff will maintain written records of all investigations of possible Prohibited Activity, the outcome of that investigation, and any fines and remedial action imposed with respect to that activity.

**G.** The Executive Committee shall have the discretion to reduce the amount of any fine assessed by NFRC, or to modify the timetable for completing the Required Remedial Action.

## **9. Method of Notification of Fine Assessment and Required Remedial Action**

Upon a determination by NFRC that an individual or entity has engaged in a Prohibited Activity, the Program Administrator shall deliver to such individual or entity by certified mail or overnight delivery service or other means that provides evidence of and a receipt of delivery, a written notification of the Prohibited Activity and an assessment of the fine set forth in this Program with respect to such Prohibited Activity. The notification shall advise the entity notified that if the Prohibited Activity is not corrected or ceased within a period designated in the letter as determined by NFRC, then the fine may continue to accrue with respect to continuing violations as provided in Section VI above.

## **10. Failure to Pay Fine and Perform Remedial Action**

**A.** In the event that any individual or entity has been notified by the NFRC Program Administrator that a final determination has been made that such individual or entity has engaged in a Prohibited Activity and has been assessed a fine according to this Program and continues to engage in the activity or act that was the subject of the NFRC notification, NFRC may increase the fine applicable to the Prohibited Activity.

**B.** In the event a fine assessment pursuant to Section VI is not paid by an NFRC program participant, the amount of the unpaid fine shall become a part of the participant's annual fees to be paid in connection with re-licensing for continued participation in the NFRC program and the participant's NFRC license shall not be renewed or may be terminated unless the fine is paid. NFRC may also pursue legal action to collect fines owed and assess interest at a rate determined by NFRC on fines not paid when due.

**C.** In the event that a fine assessment pursuant to Section VI is not paid by the individual or entity, or the Prohibited Activity continues, NFRC shall publish in the NFRC Certified Products Directory the identity of such person and the Prohibited Activity and any related information necessary to assist in protecting the consumer.

**11. No Limitation on NFRC Rights**

**A.** The authority of NFRC under this Program shall be in addition to and not in limitation of any other right or authority NFRC may have under its programs or under law. The implementation of this Program and the imposition of fines on any person shall in no manner limit NFRC's right to pursue any other remedy available to it for misuse or infringement of its intellectual property or failure to comply with the provisions of its programs applicable to the individual or entity, including, but not limited to, damages or equitable remedies such as injunctive relief.

**B.** In the event NFRC determines that it is under a legal obligation to provide information obtained in connection with this Program to any government agency or other person or entity, it shall have the authority to do so.

**C.** NFRC shall have the right to amend this Program in any manner, including modifying the designation of Prohibited Activities and the applicable fines, at any time.

**12. Implementation of Program**

NFRC staff shall send all NFRC members and NFRC program participants notification of any material changes in this Program.