



National Fenestration Rating Council Incorporated

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Compliance and Monitoring Program Manual

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FOREWORD

The National Fenestration Rating Council, Incorporated (NFRC) has developed and operates a uniform rating system for energy and energy-related 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, are mandatory ratings for inclusion on label certificates, and are supplemented by procedures for voluntary ratings of products for Air Leakage (AL), and Condensation Resistance. Together, these rating procedures, as set forth in documents published by NFRC, are known as the NFRC Rating System.

The NFRC Rating System employs computer simulation and physical testing by NFRC-accredited laboratories to establish energy and related performance ratings for fenestration product types. The NFRC 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 and related 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 (Certification Program) are set forth in the most recent versions of the following as amended, updated, or interpreted from time to time:

NFRC 700 Product Certification Program (PCP).

NFRC 705 Component Modeling Approach (CMA), Product Certification Program (CMA-PCP).

Through the Certification Program and the most recent versions of its companion programs as amended, updated, or interpreted from time to time:

The laboratory accreditation program (Accreditation Program), as set forth in the NFRC 701 Laboratory Accreditation Program (LAP).

The IA licensing program (IA Program), as set forth in NFRC 702 Certification Agency Program (CAP).

The CMA Approved Calculation Entity (ACE) licensing program (ACE Program), as set forth in the NFRC 708 Calculation Entity Approval Program (CEAP).

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 whose energy and energy-related performance characteristics are to be certified in accordance with mandatory NFRC rating procedures. At present, a Manufacturer/Responsible Party may elect to rate products for U-factor, SHGC, VT, AL, Condensation Resistance, or any other procedure adopted by NFRC, and to include those ratings on the NFRC temporary label affixed to its products, or on the NFRC Label Certificate. U-factor, SHGC and VT, AL, and Condensation Resistance rating reports shall be obtained from a laboratory that has been accredited by NFRC in accordance with the requirements of the NFRC 701.

The rating shall then be reviewed by an IA which has been licensed by NFRC in accordance with the requirements of the NFRC 702. NFRC-licensed IAs also review label format and content, conduct in-plant inspections for quality assurance in accordance with the requirements of the NFRC 702, and issue a product Certification Authorization Report (CAR), or approve for issuance an NFRC Label Certificate for site-built or CMA products and attachment products. The IA is also responsible for the investigation of potential violations (prohibited activities) as set forth in the NFRC 707 Compliance and Monitoring Program (CAMP).

Ratings for products that are labeled with the NFRC Temporary and Permanent Label, or products that are listed on an NFRC Label Certificate in accordance with NFRC requirements, are considered to be NFRC-certified. NFRC maintains a Certified Products Directory (CPD), listing product lines and individual products selected by the manufacturer/responsible party for which 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 NFRC 700 (PCP), the NFRC 701 (LAP), the NFRC 702 (CAP), the NFRC 705 (CMA-PCP), and the NFRC 708 (CEAP) procedures, and conducts compliance activities under all these programs as well as the NFRC 707 (CAMP). NFRC continues to develop the Rating System and each of the programs.

NFRC owns all rights in and to each of the NFRC 700, NFRC 701, NFRC 702, NFRC 705, NFRC 707, NFRC 708 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.

The structure of the NFRC program and relationships among participants are shown in Figure 1, Figure 2, and Figure 3. For additional information on the roles of the IAs and laboratories and operation of the IA Program and Accreditation Program, see the NFRC 700 (PCP), NFRC 701 (LAP), and NFRC 702 (CAP) respectively.

Figure 1

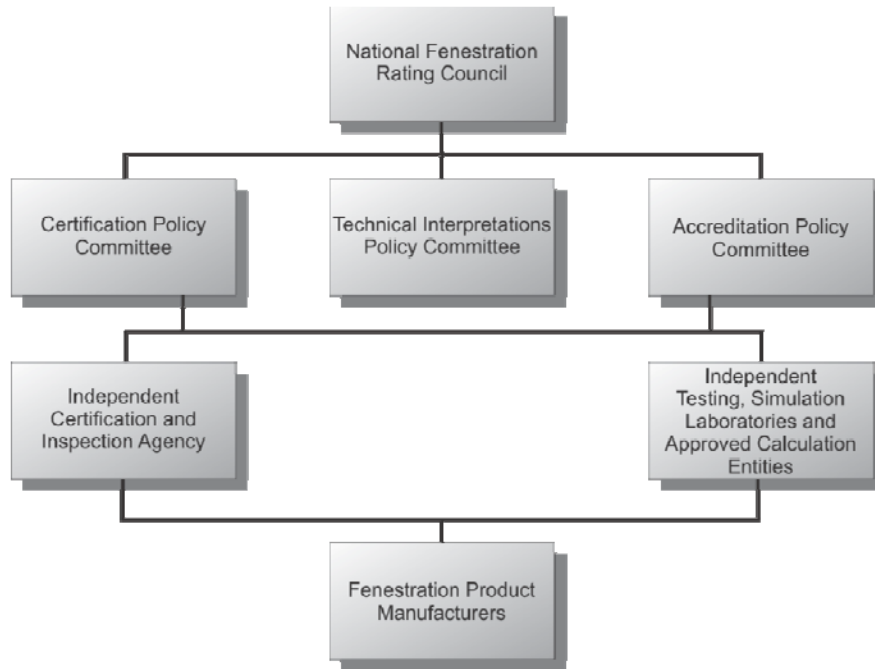


Figure 2

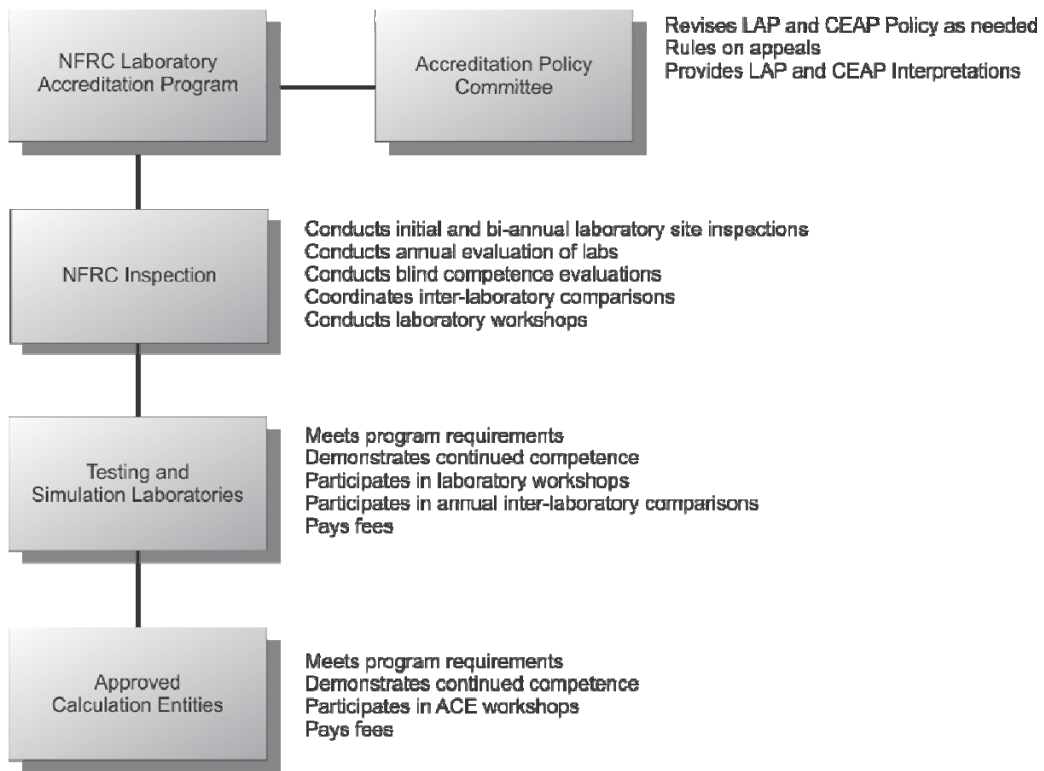
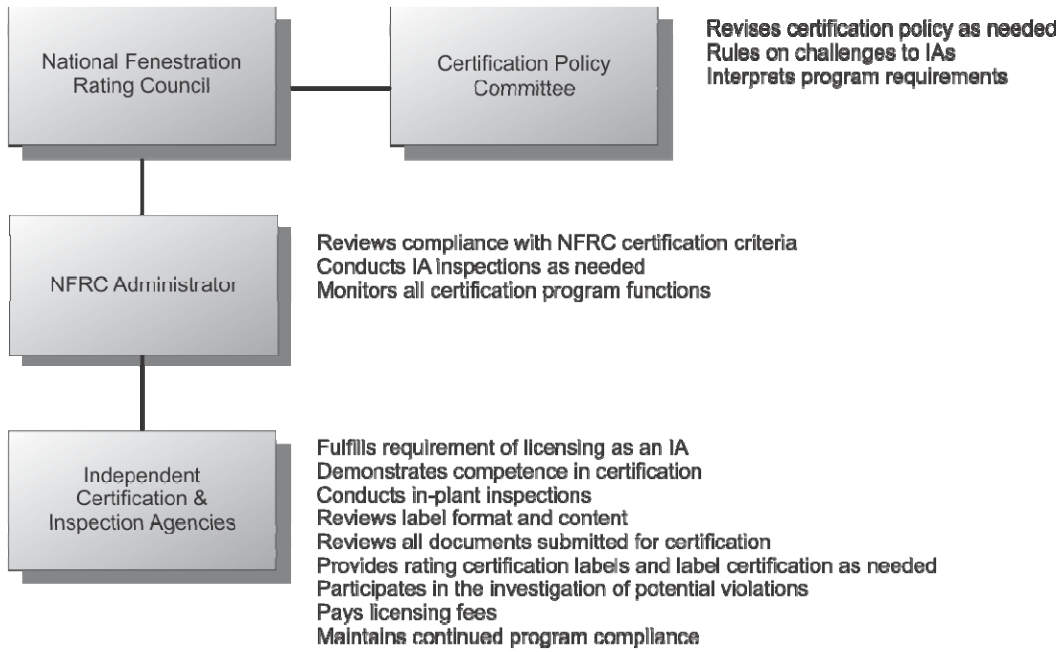


Figure 3



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

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DISCLAIMER

NFRC certification is the authorized act of a Manufacturer/Responsible Party in: (a) labeling a fenestration or related attachment product with an NFRC Permanent Label and NFRC Temporary Label, or (b) generating a site built or CMA label certificate, either of which bears one or more energy performance ratings reported by NFRC-accredited simulation and testing laboratories and authorized for certification by an NFRC-licensed IA. Each of these participants acts independently to report, authorize certification, and certify the energy-related ratings of fenestration and related attachment products.

NFRC does not certify a product and certification does not constitute a warranty of NFRC regarding any characteristic of a fenestration or fenestration-related attachment product. Certification is not an endorsement of or recommendation for any product or product line or any attribute of a product or product line. NFRC is not a merchant in the business of selling fenestration products or fenestration-related products, and therefore cannot warrant products as to their merchantability or fitness for a particular use.

NFRC THEREFORE DISCLAIMS ANY AND ALL LIABILITY THAT MAY ARISE FROM OR IN CONNECTION WITH SERVICES PROVIDED BY, DECISIONS MADE BY OR REPORTS OR CERTIFICATIONS ISSUED OR GRANTED BY ANY NFRC-ACCREDITED LABORATORY, NFRC-LICENSED IA OR ANY PRODUCT MANUFACTURER/ RESPONSIBLE PARTY; RELIANCE ON ANY NFRC PRODUCT DESCRIPTION, SPECIFICATION, RATING, TEST OR CERTIFICATION, WHETHER APPEARING IN A REPORT, A PRODUCT CERTIFICATION AUTHORIZATION OR A PRINTED OR ELECTRONIC DIRECTORY, OR ON A LABEL, OR ON A LABEL CERTIFICATE; OR THE SALE OR USE OF ANY NFRC-RATED OR CERTIFIED PRODUCT OR PRODUCT LINE; INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL OR OTHER INJURY, LOST PROFITS, LOST SAVINGS OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

NFRC program participants are required to indemnify NFRC from and against such liability.



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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 its organizational documents is:
“NFRC develops and administers energy-related rating and certification programs that serve the public by providing fair, accurate and credible information on fenestration performance.”
 - Federal law and the laws of most states prohibit deceptive trade practices and provides 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 to protect its certification mark and related trade and service marks and logo. Further, NFRC has the right under federal copyright law to protect its publications and other written materials, 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, specifying authorities, and other such responsible parties), including, NFRC-accredited testing and simulation laboratories, NFRC-licensed Approved Calculation Entity organizations (ACE organizations), and NFRC-licensed independent certification and inspection agencies (IAs).
 - Infringement of NFRC's rights causes harm to NFRC indirectly by impairing the value and reputation of NFRC's marks and by causing NFRC to expend resources and incur 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 license agreements and 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 assessing fines and/or other remedial actions applicable to certain activities as set forth in Section 6, 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 NFRC's rating and certification program. NFRC also retains its rights under federal and state laws to seek damages and injunctive relief against any party that infringes NFRC's certification mark and related marks and copyrights.

4. MONITORING PROGRAM

NFRC shall be responsible for monitoring NFRC-licensed program participants to ensure that program requirements are met. This responsibility may be fulfilled through among other measures, requests and inspections initiated by NFRC staff, NFRC-licensed IAs, and 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 6 (a "Prohibited Activity"), NFRC shall comply with the procedures set forth in Section 8.

5. RESPONSE TO BUILDING OFFICIALS

Because NFRC labels are an essential component of energy code enforcement, building and other code officials rely on NFRC when issues related to fenestration products and fenestration attachment products arise 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 these officials, including the following:

- A. NFRC will provide a one-page form to the building and code officials 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 4.

6. FINES AND REMEDIAL ACTIONS FOR PROHIBITED ACTIVITIES

- A. NFRC may, at its discretion, impose a fine against any individual or entity found to have engaged in an activity prohibited in this section. The corresponding amounts set forth (see *Table 1*) establish the parameters for those fines though NFRC retains the discretion in appropriate circumstances to adjust those fines.
 - 1. For products listed in the CPD or included as component of a product listed in NFRC's Certified Products Directory (CPD) and rated in accordance with the NFRC Product Certification Program (NFRC 700), fines shall consist of a fine per "product line", and a fine per "product" involved.
 - 2. For products (i.e., fenestration components and whole fenestration products) rated in accordance with the NFRC Component Modeling Approach Product Certification Program (NFRC 705), fines shall consist of a fine per product, and a fine per each label certificate on which the non-compliant product or component information is included.
 - 3. The fine specified may be imposed for each incidence of a Prohibited Activity. At the sole discretion of the NFRC Chief Executive Officer, 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.
 - 4. The NFRC Chief Executive Officer 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 7) has been taken. The fine imposed therefore may 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 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 8), within 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	Fine¹	Required Remedial Action² <i>(see Legend –Sec. 7)</i>
1. Labeling³		
a) Non-Compliant Labels		
i. Use of a non-compliant label or label certificate 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 on a product or NFRC label certificate for a product or multiple products, whether or not compliant, without a signed license agreement with NFRC	\$5,000/ product line PLUS \$100/product	(A)
ii. Affixing an NFRC label to a product or providing an NFRC label certificate for a product or multiple products for which product certification authorization has not been granted	\$5,000/ product line PLUS \$100/product	(A)
iii. Use of an NFRC label or label certificate that misstates an NFRC performance rating	\$5,000/ product line PLUS \$100/product	(A)
iv. Use of an NFRC label or label certificate, whether or not compliant, in advertising not approved by NFRC in accordance with the Product Certification Program (PCP) or the CMA Product Certification Program (CMA-PCP)	\$5,000/ product line PLUS \$100/product	(B)

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

² 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.

³ Or Label Certificate.

v. Reuse of an NFRC temporary label on any product	\$5,000/ product line PLUS \$100/product	(C)
vi. Advertising a product or multiple products as "NFRC-certified" when the product has not been granted product certification authorization, does not bear an NFRC label, or is not part of an NFRC label certificate	\$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 <i>(see Legend –Sec. 7)</i>
2. NFRC Programs		
i. Stating that a manufacturer/responsible party is a licensed participant in the PCP when such is not the case or stating that a specifying authority is a licensed participant in the CMA-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. Stating that an entity is licensed by the NFRC Calculation Entity Approval Program (CEAP) when such is not the case	\$2,000	(D)
vi. Failure to comply with CAP and CEAP requirements by NFRC-licensed IA	\$500	(E)
vii. Failure to comply with LAP requirements by NFRC-accredited laboratories.	\$500	(E)
viii. Failure to comply with CEAP requirements by NFRC-licensed ACE Organizations	\$500	(E)
ix. Stating that an entity is listed as a participating IGU Certification Program in accordance with NFRC 707 when such is not case.	\$2000	(D)
x. Stating that your product is IGU certified by an NFRC participating IGU Certification Program when such is not the case.	\$3000	(B)
3. NFRC Certification Mark/Membership Mark		
i. Use of any NFRC mark without a signed license agreement or written permission.	\$5,000	(F)
4. NFRC Directory		

i. Reproduction in any form or medium of all or part of the information contained in the NFRC Certified Products Directory or NFRC CMA Software Tool Certified Products Directory without the prior written permission of NFRC.	\$5,000	(G)
ii. Producing a facsimile of the NFRC Certified Products Directory or NFRC CMA Software Tool 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 or cease providing non-compliant label certificates for the products. Licensed manufacturers must immediately replace non-compliant labels with compliant labels on all units of the product whether in manufacturer's warehouse, or in manufacturer's wholesale or retail distribution system. Responsible Parties/Specifying Authorities must immediately replace non-compliant label certificates with compliant ones.
- B. Immediately cease advertising or other publication pertaining to the products or products that are improperly labeled or included in a label certificate. Licensee may then seek to obtain NFRC's permission to use the NFRC label or label certificate in advertising. At NFRC's direction, the party may be required to 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 or label certificate.
- 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 and NFRC copyrighted materials.
- G. Cease using the information; 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, individual(s), or entity shall be made by NFRC in accordance with the following process:
- i. 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, IAs, 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, or other person or entity alleged to have engaged in a Prohibited Activity (the "Respondent") 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.
 - ii. The information and evidence gathered by NFRC staff, including any information provided by the Respondent, shall be reviewed by the NFRC Program Administrator and staff to determine if there is a sufficient basis to conclude that the Respondent 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 Chief Executive Officer shall make a determination whether the Respondent has engaged in a Prohibited Activity and the appropriate fine and/or other remedial action to be required of that Respondent.
 - iii. If the NFRC Chief Executive Officer concludes a Prohibited Activity has occurred, the NFRC Program Administrator or other NFRC representative shall then notify the Respondent in writing of that finding in accordance of Section 9. 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 Respondent. The Respondent 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 Respondent. Any request for reconsideration shall be made in writing by the Respondent to NFRC's Program Administrator or other designated NFRC representative within 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 Respondent of the reasons for its disagreement with NFRC's decision. The Respondent 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.
 - iv. 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 request provided by the Respondent 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 Respondent shall be promptly advised in writing of the decision of the Executive Committee in accordance with Section 9. The decision of the Executive Committee shall be final and not subject to further appeals.

- v. 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.
- vi. The Executive Committee shall have the discretion to reduce the amount of any fine assessed by NFRC, or to modify the Required Remedial Action or 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 a Respondent 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 and Required Remedial Action set forth in this Program with respect to such Prohibited Activity. The notification shall advise the Respondent 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 6 and that other Required Remedial Action may be mandated.

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 6 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 an annual rate of interest at 8% on fines not paid when due or such other interest rate as NFRC determines is reasonable.
- C. In the event that a fine assessment pursuant to Section 6 is not paid by the Respondent, 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 and Required Remedial Action 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 shall send all NFRC members and NFRC program participants notification of any material challenges in this Program.