

THE RED FLAG RULE AND YOUR WATER/WASTEWATER UTILITY

By Randy Hellbusch

What is the Red Flag Rule? I have had several water systems pose this question lately. It is actually the Fair and Accurate Credit Transactions Act (FCRA).

What does my utility need to do to comply? The rule “requires any entity where there is a risk of identity theft to develop and implement an identity theft prevention program. The program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft. The rule was issued by the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The original date of compliance was November 1, 2008 and includes all U.S. utilities. However, the FTC did issue the following press release: **“Given the confusion and uncertainty within major industries under the FTC’s jurisdiction about the applicability of the rule, and the fact that there is no longer sufficient time for members of those industries to develop their programs and meet the November 1 date, the Commission believes that immediate enforcement of the rule on November 1 would be neither equitable for the covered entities nor beneficial to the public. Delaying Commission enforcement of the rule as to the entities under it’s jurisdiction by six months, until May 1 2009, will allow these entities to take the appropriate care and consideration in developing and implementing their programs. It also will give the Commission time to conduct additional education and outreach regarding the rule.”**

The Primary purpose of the Red Flag Rule is to protect against the establishment of false accounts and ensure existing accounts are not being manipulated. The regulation does not address or require utilities to adopt a measure that will protect consumer information and prevent unauthorized access. However, implementation of good management practices to protect personal consumer data can prevent identity theft.

The National Rural Water Association, along with state affiliates, created an approved model program that can be used by utilities to assist in compliance with the rule. The model is available at our website (www.nerwa.org). Feel free to download and use the compliance model. The model will walk you through the required steps. Remember, all utilities are required to comply with the rule even if you only keep basic account information. For many small utilities, the risk assessment portion of the model will show that no changes are needed to current policies.

The rule does state, however, that the plan be updated on an annual basis. The update can be just a simple review of current policies, but must be approved by the governing body or senior management.

The Identity Theft Prevention Program of the Utility does not need to be submitted to or reviewed by the FTC. Also, there is no requirement of certification of the Program by the FTC.

If you have any questions regarding the Red Flag Rule and would like any assistance, give us a call.