



Texas Public Power Association

MEMORANDUM

TO: TPPA Prime Contacts
FROM: Debra L. Scarbo, Communications Manager, TPPA
RE: FACT Act Identity Theft Deadline of November 1st
DATE: September 23, 2008

Utilities (including municipal and cooperative systems) and other creditors have until November 1, 2008 to implement a written program to comply with the Federal Trade Commission's new rule on identity theft. The Fair and Accurate Credit Transactions Act (FACT Act) of 2003 took effect January 1, 2008, but entities covered by the rule have until November 1st to comply with it. The rule is sometimes referred to as the "red flags identity theft rule."

If your utility has not already done so, your Identity Theft Prevention Program must be approved by either your governing body or council by November 1, 2008. The Federal Trade Commission will not be checking individual utilities to see if this deadline is met, but it is important to move forward promptly. Having a well thought-out program in place in the near future is preferred to rushing to incorporate a pro-forma plan "for the books."

Information about the FACT Act has previously been made available by TPPA, the American Public Power Association, and the Texas Municipal League.

TPPA has obtained various documents on the FACT Act that include examples of rules and several policy templates. The templates can be modified to meet the needs of your utility. See the TPPA web site at <http://www.tppa.com/resources> for more information. These materials were developed by other public power systems, and TPPA cannot warrant or formally endorse these materials which are provided for informational purposes only.

As you implement your utility's identity theft program, it may be useful to find out more about certain other laws that could potentially affect it, particularly these:

Federal Privacy Act – Prohibits all federal, state and local government agencies from denying an individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his or her social security number. (5 U.S.C. §552a note.)

Texas Business and Commerce Code, Section 35.581 – Approved by the Legislature in 2005, this state law prohibits disclosure of a social security number in business transactions unless a privacy policy is made available to the individual providing the number. It outlines privacy policy requirements, provides penalties for non-compliance, and applies to municipally owned utilities, which must have a privacy policy and make it available to a customer when asking for a social security number in a transaction such as establishing a utility account.

Please remember the TPPA DOES NOT OFFER LEGAL ADVICE. This memorandum is for your information only, and, you should consult with your city attorney or seek your own legal counsel.

Thanks.