

# RED FLAG RULE

Financial institutions and businesses that extend credit to consumers will soon need to comply with a new rule effective August 1, 2009. The Federal Trade Commission, Federal Reserve, and other financial regulators have developed the Red Flag Rule under the Fair and Accurate Credit Transactions Act of 2003 to protect against identity theft.

## Who must comply with Red Flag requirements?

The Red Flag Rule applies to “financial institutions” and “creditors” with “covered accounts.”

• **Financial Institution** means: a bank or credit union that holds a deposit or other type of account on behalf of consumers.

• **Creditor** means any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. The definition of “credit” includes a right granted to defer payment for any purchase. **Thus, any person that provides a product or service for which the consumer pays after delivery is a creditor.**

• **Covered Account** means: an account used for personal, family, or household purposes that involves multiple payments **or any account for which there is a reasonable foreseeable risk of identity theft. Petroleum marketers are considered creditors with covered accounts under the Red Flag Rule.**

## What must I do to comply with the Red Flag Rules?

Under the Red Flag Rule, petroleum marketers must develop a written program that identifies and detects the relevant warning signs - or “red flags” - of identity theft. These may include, for example, unusual account activity, fraud alerts on a consumer report, or attempted use of suspicious account application documents. The program must also describe appropriate responses that would prevent and mitigate the crime and detail a plan to update the program. The program must be managed by a senior employee, include appropriate staff training and provide oversight of any service providers. Click [here](#) for a **Red Flag written program template.**

## What red flags must I look for with respect to customer accounts?

The rule includes 26 possible “red flags” to be identified in a written identity theft prevention program, including:

- ◆ Forged applications;
- ◆ Suspicious documents, personal identifying information, or addresses;
- ◆ Change of address followed by a request for a new credit card;
- ◆ Consumer reporting agency alerts or warnings;
- ◆ Identical social security numbers supplied by different customers;

- ◆ Customers not receiving account statements; and
- ◆ Inactive accounts.

### **When must I comply with the Red Flag Rule?**

Petroleum marketers must have a written program that detects red flags in connection with a covered account by August 1, 2009. Failure to comply could result in monetary fines and enforcement actions. Furthermore, companies that unwittingly facilitate identity theft are often subject to significant negative media attention. Some commentators suspect that the Red Flag Rules will eventually become the standard of care for determining whether a company has negligently contributed to identity theft.

### **Conclusion:**

Whether a business is covered by the Red Flags Rule depends on whether its activities fall within the relevant definitions. Members are subject to the Red Flags Rule if they are “creditors” and if they own “covered accounts,” as those terms are used in the Rule. The member is a creditor if it (1) offers its own fuel credit card or (2) extends credit by selling fuel to customers now and billing them later. Likewise, the member owns covered accounts if it (1) provides its own fuel card account or (2) has consumer accounts for personal, family or household purposes or business accounts (which by definition are vulnerable to identity theft). The Red Flag Rule does not apply to someone who only accepts credit or debit cards issued by someone else (MasterCard, Visa, etc.).

Marketers must assess the program—at least annually—to ensure it remains current. If a marketer issues a fuel card, it must validate an address when it receives an address change notification.