amendment will simplify the application process and reduce work required of the exporter in submitting applications.

EFFECTIVE DATE: September 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (202-377-4196).

SUPPLEMENTARY INFORMATION: This revision eliminates all requirements for use of Form DIB-623P, Application Processing Card, in order to simplify the application process and reduce work required of the exporter in submitting applications.

Accordingly, the Export Administration Regulations (15 CFR Part 368 et seq.) are amended as follows:

PART 372—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

1. In § 372.4, paragraph (a) is revised, paragraph (a) (5), excluding "Note", is deleted, and the second sentence of (b) is deleted. As revised, paragraph (a) reads as follows:

§ 372.4 How to apply for a validated license.

(a) *Form and Manner of Filing*—(1) *Application Form.* An application for a validated license must be submitted on Form DIB-622P, Application for Export License. Since January 1, 1976, only Forms DIB-622P revised March 1975 or later are acceptable. Earlier versions will be returned without action. An application that omits essential information, or is otherwise incomplete, will be returned without action to the applicant. (See § 370.12 for instructions on obtaining forms.)

* * * * *

PART 373—SPECIAL LICENSING PROCEDURES

§ 373.2 [Amended]

2. Paragraph (c) (2) (i) of § 373.2 is deleted and reserved.

§ 373.3 [Amended]

3. Paragraphs (d) (2) (i) and (d) (3) (i) are deleted and reserved.

4. By revising § 373.5(d) (1) to read as follows:

§ 373.5 Periodic Requirements (PRL) License.

* * * * *

(d) *Application Procedure*—(1) *Application Form.* An application for a PRL Licensee shall be prepared and submitted on Form DIB-622P, Application for Export License, in accordance with instructions contained in § 372.4(a), except as modified below.

5. By revising § 373.6(b) (1) to read as follows:

§ 373.6 Time Limit (TL) License.

* * * * *

(b) *Preparation of a TL License Application*—(1) *Application form.* An application for a Time Limit License shall be prepared and submitted on an Application for Export License, Form DIB-622P, in accordance with instructions in § 372.4(a), except that the applicant shall: * * *

§ 373.7 [Amended]

6. By deleting and reserving §§ 373.7 (d) (1) (ii) (*a*) and 373.7(d) (1) (iv) (*a*).

PART 379—TECHNICAL DATA

§ 379.5 [Amended]

7. By amending § 379.5 as follows:

Section 379.5(a) (2) is deleted, and § 379.5(a) (3) is renumbered as § 379.5 (a) (2).

Section 379.5(c) is deleted and reserved.

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization order 10-3, dated Nov. 17, 1975, 40 FR 58876 (1975), as amended; and Domestic and International Business Administration Organization and Function Orders 40-1, dated November 17, 1975, 40 FR 59764 (1975), as amended and 46-2, dated November 17, 1975, 40 FR 59761 (1975) as amended.)

RAUER H. MEYER,
Director,
Office of Export Administration.

[FR Doc.77-27027 Filed 9-13-77;3:39 pm]

Title 16—Commercial Practice

CHAPTER I—FEDERAL TRADE COMMISSION

PART 433—PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Two-Party Open End Consumer Credit Contracts

AGENCY: Federal Trade Commission.

ACTION: Modification of exemption from trade regulation rule; denial of proposed permanent exemption—Forty-five day extension of exemption.

SUMMARY: On April 14, 1977 the Commission issued a limited exemption from certain requirements of the Trade Regulation Rule concerning the Preservation of Consumers' Claims and Defenses (42 FR 19487), for two-party open end consumer credit contracts that were executed before August 1, 1977 and do not involve the use of negotiable instruments or waivers of claims and defenses. That exemption was subsequently extended for a period of 45 days beyond August 1, 1977 (42 FR 40426). The Commission when it issued the exemption also invited comment on the exemption issued and on a proposed, permanent exemption.

Based on its review of the comments received, the Commission has decided to modify the exemption so that the definitions make it clear that "30 day accounts", which do not allow the consumer the option of paying in installments, fall within the exemption issued. The Commission has also carefully reviewed the record and has decided that the arguments and data presented by commenters do not support the issuance of a permanent exemption. The Commission is however, further extending the limited exemption for another 45 days beyond September 14, 1977. Thus, the Rule will apply to all consumer credit contracts taken or received by sellers after October 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Walter Diercks, Deputy Assistant Director, Division of Compliance, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202-254-9491).

DATES: The Rule will apply to all consumer credit contracts taken or received by sellers after October 31, 1977.

SUPPLEMENTARY INFORMATION: Section 433.2(a) of the Trade Regulation Rule on Preservation of Consumers' Claims and Defenses requires that a short Notice be included in all consumer credit contracts used by sellers. The required Notice expressly preserves the consumers' right to assert against any third party which subsequently acquires the contract any legally sufficient claims and defenses that the consumer may have against the seller.

On April 14, 1977 (42 FR 19847) the Commission issued a limited exemption from the Rule for two-party open end consumer credit contracts that were executed before August 1, 1977 and do not involve the use of negotiable instruments or waivers of claims and defenses. The Commission subsequently extended the exemption for a period of 45 days beyond August 1, 1977 (42 FR 40426). The Commission is further extending its limited exemption for an additional 45 day period. Thus, as of November 1, 1977 the Rule will apply to all consumer credit contracts taken or received by sellers.

The Commission also, in its April 14 1977 FEDERAL REGISTER Notice, invited interested parties to comment on the exemption, as issued, as well as a permanent exemption proposed in a petition filed by the National Retail Merchants Association (NRMA) and the American Retail Federation (ARF). The proposed exemption would have applied to two-party open end consumer credit contracts which do not involve the use of negotiable instruments or waivers of claims and defenses. Further, upon transfer of the contract, the Notice required by the Rule would become a term of the consumer credit contracts.

Twenty-six comments were received by the Commission in response to its April 14, 1977 FEDERAL REGISTER Notice. Industry commenters basically argued that the Commission should issue the broader exemption proposed by the National Retail Merchants Association (NRMA) and the American Retail Federation (ARF) in their petitions for exemption. Industry commenters argued that because the proposed exemption is confined to contracts that are not negotiable and do not contain waiver provisions, and because they would agree to include the required Notice in the event of transfer, consumers would receive equivalent protections. The National Consumer Law Center objected to the issuance of any exemption for two-party credit contracts.

After analyzing the views, arguments and data, the Commission has decided that the exemption, as issued, should be slightly modified and, further, that the petitions submitted by NRMA and ARF should be denied.

In denying the NRMA/ARF petitions the Commission carefully weighed the costs of prospective compliance with the Rule against the potential for consumer injury that might result from exempting two-party open end consumer credit contracts from the Rule. Major compliance costs put forth by industry commenters were those costs associated with disposing of obsolete inventories of forms, typically a six-month supply, and reprinting new forms—a total of $3 million. The Commission decided that the costs of prospective compliance, especially in light of the extension of the exemption through October 31, 1977, would be substantially less than $3 million and further that these costs did not outweigh the potential for consumer injury that might result if the exemption were extended permanently. The potential for consumer injury stems mainly from the state laws that may operate to cut off consumers' claims and defenses despite non-negotiability and the absence of a waiver. Several commenters conceded that certain state laws may have such an effect. The Commission has further reviewed these state laws and determined that the uncertainties of the state laws of assignment suggests the desirability of denying the proposed permanent exemption.

In order to give all sellers an adequate opportunity to come into compliance with the Rule, the Commission is extending its limited exemption for an additional 45 days beyond September 14, 1977. Thus, the Rule will apply to all consumer credit contracts taken or received by sellers after October 31, 1977.

The Commission is also modifying 16 CFR 433.3(b)(3), the definition of "open end credit," to track the language of 202.2(w) of Federal Reserve Board Regulation B, as amended March 23, 1977 (12 CFR Part 202), to include so-called "30 day accounts," extensions of credit which do not allow the consumer the privilege of paying in installments, within the exemption, issued on April 14, 1977.

The primary purpose of the exemption, as issued, was to avoid costs involved in modifying existing two-party open end credit agreements. The Commission decided that there was no justification for distinguishing "30 day accounts" from other two-party open end credit contracts that are exempted through October 31, 1977.

Accordingly, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., the provisions of Part I, Subparts B and C of the Commission's Procedures and Rules of Practice, 16 CFR 1.7, et seq., and 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedures), the Commission hereby modifies §§ 433.3(a) and 433.3(b)(3) of 16 CFR Part 433:

§ 433.3 Exemption of sellers taking or receiving open end consumer credit contracts before November 1, 1977, from requirements of § 433.2(a).

(a) Any seller who has taken or received an open end consumer credit contract before November 1, 1977, shall be exempt from the requirements of 16 CFR Part 433 with respect to such contract: *Provided*, The contract does not cut off consumers' claims and defenses.

(b) Definitions. The following definitions apply to this exemption: * * *

(3) "Open end credit": Consumer credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or make loans from time to time directly from the creditor or indirectly by use of a credit card, check or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

* * * * *

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

SEPARATE STATEMENT OF COMMISSIONER CALVIN J. COLLIER

Commissioner Collier dissented from the Commission's decision to deny the permanent exemption, stating:

Although I agree with the Commission's decision to grant a further temporary exemption, I dissent from its decision to refuse a permanent (conditional) exemption from the "Holder-in-Due-Course Rule"[1] for open-end credit and 30-day accounts. I would grant such an exemption where:

The debt instrument is not a negotiable instrument;

It does not contain a waiver or limitation of consumer claims or defenses; and,

It is not transferred, sold, pledged or assigned.

This exemption would require the addition of the notice prior to any subsequent assignment.

By its terms, the exemption would unquestionably provide the same measure of consumer protection as the rule itself. The rule has relevance only where obligations are assigned to third persons; and, among other things, the exemption would be unavailable if an assignment were made. The possibility for lesser consumer protection can therefore arise only if the exemption is exceeded and the rule is violated. Conversely, neither the rule nor the exemption is violation-proof, although the prospect of substantial civil penalties and litigation expenses, far in excess of the likely profit from violating the rule (with or without the exemption), should hold in check the risks of this behavior.

The central issue, in my view, is whether the exemption will make it significantly easier to both violate the law and get away with it. An affirmative answer, it seems to me, requires a showing that: (1) Detection of law violations will be more difficult; (2) the cutting off of consumer claims or defenses will be more likely; and (3) sellers and assignees will perceive these advantages as sufficiently attractive to offer a premium price for these consumer obligations. Some discussion on each of these conditions is required.

At the outset, however, it is important to note that the failure to grant an exemption will add to the costs of supplying credit. The costs in wasted forms alone are estimated to be between $0.5 million and $3 million, depending on various assumptions.[2] There are also the intangible costs of aggravation that invariably attend compliance with the latest government regulatory command. Finally, the exemption proposed would reduce the inevitable costs of consumer confusion that surely will result when a consumer applying for an open-end or 30-day account reads the required notice; inquires with a raised eyebrow whether the seller plans to assign his obligation to a third party; is told, "no"; asks then what the reason for the notice is; and is told that it serves no purpose except that it is required by law. The Commission can ill afford to incur unnecessary costs of this kind.

The staff has argued that violations of the rule will be more difficult to detect as a result of the exemption. The principal approach to policing compliance with the rule will apparently be subpoenas of credit agreements to assure that the required notice is included.[3] But policing compliance with the rule with the exemption could be just as easily achieved by demanding the credit agreements (to be sure that they contained either the required notice or the absence

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[1] Trade Regulation Rule Concerning Preservation of Consumers Claims and Defenses, 16 CFR Part 433 (1977).

[2] The smaller estimates depend on the assumption that sellers have been depleting their inventories of old forms during the pendency of our deliberations. Moreover, today's action of the Commission to extend the temporary exemption will reduce these costs even further. These costs, like all other costs, must be passed through to consumers, no matter what the state of competition in the regulated industry. (Economic theory tells us that there would be a proportionately greater passing through of these costs the more competitive the industry.)

of waiver language) and by further demanding a list of those that had been assigned. The absence of the notice on the assigned agreements would, of course, indicate a violation of the rule.[4] In short, I do not see how the task of policing compliance with the rule would be rendered more costly by the exemption,[5] how detection would be made more difficult, or how sellers or assignees would perceive a more valuable temptation to violate the rule.

Neither do I believe that the exemption would increase the likelihood that consumers' claims and defenses would be cut off by the exemption. Sellers who are not deterred by the prospects of heavy civil penalties but who wish to cut off consumers' claims might just as well do so by ignoring the rule altogether.

The staff is concerned, however, about the situation where the seller (in excess of the exemption and thus in violation of the rule) assigns an open-end or 30-day account that is not on its face a negotiable instrument and that does not contain a waiver of defenses. Under the Uniform Commercial Code the consumer's claims and defenses against the seller could be asserted against the assignee.[6] But under some recently enacted state consumer protection statutes the consumer's rights are less clear. My research has disclosed eleven such statutes that could be interpreted to abrogate consumer rights. Of these, eight seem to be triggered by the presence of a waiver clause of the kind that the exemption would absolutely forbid.[7] Behind each of these statutes there seems to have been a clear attempt to expand consumer rights in the face of a purported waiver, not to restrict them in the absence of one. In three other states, the statutory language is more susceptible of a perverse interpretation that would limit, rather than expand the consumer rights granted by ordinary commercial law.[8] No court to my knowledge, or, apparently to the staff's, has ever interpreted any of these statutes to the feared effect. Should a court ever do so, I do not see why we could not cancel the exemption or limit its geographic application for that reason.

The staff also argues that open-end consumer obligations might be transferred to a bankruptcy trustee without the notice (again, in violation of the rule). The trustee, it is thought, might retransfer, without adding the notice, to a third party. If these obligations did not bear a waiver of the kind that the exemption would forbid, I do not clearly see how consumer claims and defenses could be cut off. Nor do I see any reason why a bankrupt, bankruptcy judge or trustee[9] would fail to respect the legal obligation to include the notice at the time of assignment.

Each variety of potential consumer injury hypothesized by the staff requires conduct in excess of the exemption and in violation of the rule. Undoubtedly, rule violations will occur in spite of the prospect of civil penalties and some[10] consumers will suffer injury. But I fail to see how the proposed exemption will enlarge this class of violators or aggravate that injury. The prospects of detection are the same and the potential for incremental profit is remote.

Indeed, the information at hand indicates that the chances for consumer injury by cutting off consumer claims and defenses in the case of open-end or 30-day accounts is especially remote. These arrangements typically signal a continuing relationship between consumer and seller grounded in part on the seller's hope that the consumer will be a repeat, if not a regular, customer. This phenomenon is consistent with the information we have indicating that such accounts are seldom assigned (except to bill collectors against whom claims and defenses are available in any event). In contrast, the rule itself was principally directed at so-called fly-by-night sellers and sellers engaged in occasional, nonrepeat sales of big-ticket items. In short, there is no reason to suspect that the proposed exemption would aggravate such compliance problems as may otherwise arise.

Finally, we are urged to reject the exemption because the required notice may contribute to consumer education. The short answer to this question is that the rule is drafted in legal jargon[11] to serve a legal, not an educational, purpose.[12] For example, the rule does not advise consumers of their substantive rights, but only that they are preserved in an assignment, whatever they are. Moreover, if no assignment occurs, no educational purpose can possibly be served, and only confusion—as opposed to education—can result.

For these reasons, I believe that the Commission's action in failing to grant a conditional exemption for open-end credit will oblige consumers to pay more for credit with no added protection. I would grant an exemption conditioned along the lines suggested in the first part of my statement.

SEPARATE STATEMENT OF THE COMMISSION

The Commission in denying the petition issued the following statement:

The Commission has carefully reviewed the petitioners' request for a permanent exemption from the requirements of the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (16 CFR Part 433) and has determined to deny it.

When promulgated the Rule was designed to ensure that consumers purchasing on credit would not, as a result of negotiation or assignment of their credit instruments, be deprived as to third party holders of those instruments of defenses which the consumers would have been able to assert against the original sellers. In fashioning the Rule the Commission determined that its requirements should apply to "consumer credit contracts" (as defined in the Rule), a category somewhat broader than negotiable instruments or contracts containing waiver of defenses clauses. One concern of the Commission in taking this approach was that certain State laws

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[3] It is possible that some portion of law violators will compound their misconduct by failing to produce any noncomplying documents.

[4] Once again, and presumably to the same extent, a violator could compound his misconduct by falsifying his return. See previous footnote.

[5] Although efficiency of enforcement is an important consideration, we ought to strive to confine violations of our law to those situations in which consumers may be injured. Failing to grant the exemption when the vast bulk of open-end obligations are not assigned could divert resources to policing "technical" violations that have little possibility of ripening into actual consumer injury. We might in this way actually reduce, not increase, our enforcement efficiency.

[6] U.C.C. § 9-318(1) (1972 version). Claims and defenses arising from the contract are good against the assignee whether they accrue before or after assignment. U.C.C. § 9-318(1)(a) (1972 version). Consumers' claims not arising from the contract (such as a personal injury claim against the seller) are good against the assignee if they accrue before assignment. U.C.C. § 9-318(1)(b) (1972 version). In addition, it is extremely likely that an assignee of any debt instrument not bearing the required notice would be held to have taken the instrument with actual knowledge (implied by law) that the obligation is conditional on the seller's preference.

[7] In some of these eight states there is also an issue whether the relevant statutes apply at all to open-end. 2 Consumer Credit Guide (CCH) (Del.) ¶6012, 6042; 3 Consumer Credit Guide (Kans.) ¶5154; 3 Consumer Credit Guide (CCH) (Ohio) ¶6016; Id. (Pa.) ¶¶6225, 6275; Id. (S.C.) ¶5104; Id. (Tex.) ¶6023; Id. (W. Va.) ¶5032; Id. (Wisc.) ¶5107. Of these the Kansas statute is most troublesome.

[8] 1 Consumer Credit Guide (CCH) (Ariz.) ¶6152. Even here, however, most consumers will find a strong counter-argument in Id., ¶6151. See also 3 Consumer Credit Guide (CCH) (N.C.) ¶6325; 3 Consumer Credit Guide (CCH) (S.D.) ¶6185A.

[9] It is at least doubtful that those concerned with administering the bankrupt's estate would violate our rule and subject themselves to personal liability for civil penalties, all for the benefit of creditors. To be sure, the bankruptcy law may require that the consumer have a provable claim against the estate, but this would appear to be so whether the notice is included in the underlying agreement or not.

[10] In order for consumers to be injured (with or without the exemption) the following events must conjoin: (1) The consumer must have a valid claim against the seller. (2) The consumer must not be in a position to assert this claim against the seller prior to assignment. (3) There must be an assignment. (4) The seller and the assignee must both refuse to adjust the claim. (5) The buyer must be willing to litigate the claim (as such or as a defense). (6) There must be a violation of the rule. (7) Ordinary operation of law, in face of the violation, must cut off the claim on assignment.

Open-end is distinguishable from other forms of credit covered by the rule because of the greater infrequency of events (3) and (7), to say nothing of (1).

[11] The required notice has already achieved the dubious distinction of appearing in the Gobbledygook column of the Washington Star. Washington Star, July 1, 1976.

[12] Moreover, consumers would not have access to the notice when it is included in a master two-party credit card agreement, as would be permitted.

might operate to limit or curtail defenses of consumers against assignees of "consumer credit contracts" even though such contracts might not be negotiable in form nor contain a waiver of defenses clause.

In seeking an exemption for open-end credit contracts, petitioners have not denied the possibility that in some states assignment of these contracts may result in that very loss of claims and defenses which the Rule is intended to prevent. While there is some dispute over the extent to which this may occur—and a precise evaluation is clearly not possible because of uncertainty over the interpretation of various state laws which, notwithstanding benign purposes may be construed to pernicious effect—it is conceded by both petitioners and Commissioner Collier in his dissent that consumers will be deprived of their claims. We believe that if the problem were indeed trivial or purely speculative that fact would and should have been documented in the petitions of those intimately involved in the extension of credit whose burden it is to justify the requested exemption.

In lieu of hard data, the petitions merely suggest that there is a better way than the Rule to prevent the possibility of loss of defenses as a result of assignment. Petitioners contend that rather than requiring inclusion of the Rule's prescribed notice in all open-end contracts it should only be required in such contracts at the time those contracts are assigned.[13]

The Commission determined when it promulgated the Trade Regulation Rule that the best way to prevent loss of consumer claims and defenses against third parties was to require the notice in all "consumer credit contracts." The instant petitions do not demonstrate that this original determination was incorrect. Our principal concern with the exemption proposed by petitioners is that it places the burden of compliance upon retailers at a time when they may be least likely to shoulder it or be detected if they do not. A requirement that the notice be placed in all consumer credit contracts is unambiguous, easily adhered to, and readily monitored. Compliance is likely to be widespread. Compliance with a requirement that the notice be incorporated into the contract only at the time of assignment is much more problematic. It is not apparent to us that a contract may be unilaterally modified by the creditor, and the process of contract modification upon assignment might, therefore, necessitate preassignment contact with the debtor. Diminishing the likelihood that this will occur is the fact that assignments often take place when the assignor is least concerned with the technical requirements of the law or least fearful of the scrutiny of the law enforcer, i.e., when its financial fortunes are in decline or when it faces bankruptcy.

[13] The Rule would still apply under petitioners' proposal to such open-end contracts as might be negotiable in form or contain a waiver of defenses clause.

A creditor required in the normal course of business to place the notice in all contracts will do so as a matter of routine procedure and face ready detection if it fails. A creditor making an occasional assignment, or making numerous assignments in the face of financial trauma or bankruptcy may not be aware of the requirement of a rule by which it has never before been affected, and if aware may be less apprehensive of detection. Indeed, its violations will be more difficult to detect. In light of these considerations and on the basis of the petitions before us, we find no reason to alter the Commission's earlier conclusion that requiring inclusion of the notice in all consumer credit contracts is more likely than alternative approaches to minimize the harm which the Rule is designed to prevent.

At the same time, the Commission recognizes that the issue is a difficult one and that some misunderstanding as to the scope of the Rule's provisions may have occurred. As a result, the Commission has made every effort to minimize or eliminate the costs attendant upon compliance with the Rule. In April 1977 the Commission granted a limited exemption for pre-existing open-end credit contracts and open-end contracts signed prior to August 1, 1977. Subsequently the Commission granted an additional extension of 45 days in order to minimize or eliminate the costs of compliance and has now authorized an additional 45 day period during which petitioners may bring themselves into compliance.[14]

Under these circumstances, the Commission believes, and has been given no reason to doubt, that the costs of adding the required notice to future form contracts will be insignificant, and do not justify dilution of the protections thereby afforded. Accordingly, the Commission has declined to grant the requested permanent exemption for two-party open-end credit contracts.

[FR Doc.77-27075 Filed 9-15-77;8:45 am]

[14] While Commissioner Dole concurs in the portion of the Commission's decision denying the permanent exemption, she continues to believe that the costs of immediate compliance have not been shown to outweigh the value of the protection to consumers that will be lost due to the extensions granted by the Commission.

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5863, 34-13938, 35-20166, AS-226]

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Marketable Securities and Other Security Investments

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted amendments to its rules regarding disclosures by commercial and industrial companies of investments in marketable securities and other security investments. Current economic conditions and events have indicated a need for more detailed information on material concentrations of investments in the securities. The requirements of the amended rules will result in improved disclosures of these concentrations of investments by commercial and industrial companies.

DATE: Effective for financial statements for fiscal years ending after December 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert R. Love, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-1773).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Commission originally issued a proposal in Securities Act Release No. 5668 (34-11986, IC-9116) [41 FR 4833] on January 7, 1976, to require disclosure in a footnote to the financial statements of information regarding concentrations of investments in marketable securities and other investment securities. Basically, the proposal would have required footnote disclosure by all registrants of the investments in such securities of any issues for which the aggregate book value exceeded five percent of stockholders' equity. This proposal was issued at the time Accounting Series Release No. 188 [41 FR 4817] was issued which mandated certain special disclosures for registrants' holdings of New York City securities because of the unusual risks and uncertainties pertaining to them, and, as stated in that release, the proposal was part of a longer term and more generalized effort to deal with the fact that, because other issuers of securities may suffer financial difficulties severely affecting a registrant's holdings of such securities, material concentration of holdings of any security may warrant disclosure.

After consideration of the comments on the proposal, the Commission issued a revised proposal in Securities Act Release No. 5825 (34-13500, 35-20016) [42 FR 23853] on May 2, 1977. In the revised proposal major changes were made (1) to change the criterion for the required footnote disclosures to a basis of the investments in the securities of any issuer for which the aggregate market value exceeds one percent of total assets, and (2) to limit the applicability of the requirements to commercial and industrial companies which prepare financial statements in accordance with Article 5 of Regulation S-X [17 CFR Part 210].

Other technical revisions were made in the proposal, including amendments of the instructions to the schedule prescribed under Rule 12-02 [§ 210.12-02] of Regulation S-X, "Marketable securi-