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 (202-377-4186).

SUPPLEMENTARY INFORMATION:

This revision eliminates all requirements for use of Form DIB-622P, 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 386 et seq.) are amended as follows:

PART 372—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

1. In § 372.4, paragraph (a) is revised, paragraph (a) (3) 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 1976 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 PROCEEDURES

§ 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 License 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 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) (d) (a) and 373.7(d) (1) (f) (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.

PART 387—OPERATIONAL INSTRUCTIONS

§ 387.5 [Amended]

9. By deleting and reserving §§ 387.5 (d) (1) and 387.5(d) (1) (f) (a).

PART 399—INTERNATIONAL AGREEMENTS

§ 399.5 [Amended]

11. By deleting and reserving §§ 399.5 (d) (1) and 399.5(d) (1) (f) (a).

PART 399—OPERATIONAL INSTRUCTIONS

§ 399.5 [Amended]

13. By amending § 399.5 as follows:

§ 399.5 (a) (2) is deleted, and § 399.5 (a) (3) is renumbered as § 399.5 (a) (2).
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. Retailer 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, was to avoid costs involved in modifying existing two-party open end credit agreements. The Commission determined 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 433.5(b) 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 before November 1, 1977, 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. 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" 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 lost, 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 risk of this behavior.

The central issue, in my view, is whether the exemption will make it simple enough for sellers to both violate the rule 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 of 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 open-end credit. The costs in wasted forms alone are estimated to be between $.5 million and $3 million, depending on various assumptions. There are also the intangible costs of aggravation that sellers will attend compliance with the latest government regulatory command. Finally, the exemption proposed would reduce the inevitable costs of consumer confusion that sellers would recurrently applying for an open-end or 30-day account read the required notice; inquire as to 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 intent of the approach to policing compliance with the rule will apparently be subpoenas of credit agreements to assure that the required notice is included. 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 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 lost, 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 risk of this behavior.

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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. In short, I do not see how the task of policing compliance with the rule would be rendered more costly by the exemption, how detection would be more difficult, and fourth, how the 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 Code, the consumer's claims and defenses against the seller could be asserted against the assignee. But under some recently enacted state consumer protection statutes the seller's rights are less clearly defined. An early study by the staff has disclosed eleven such statutes that could be interpreted to abrogate consumer rights. Of these, eight seem to indicate that the assignment does not make the waiver clause of the kind that the exemption would absolutely forbid.

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. For example, inasmuch as the vast bulk of open-end obligations are not assigned, the exemption would 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. §§ 9-311, 9-312 (1972 version) for 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 unlikely 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 raised regarding whether the debtor personally invokes the rule. The staff is aware of no court decision at all on open-end. 2 Consumer Credit Guide (CCB) (Del.) §6012, 6062; 3 Consumer Credit Guide (RC) (Ohio) §5016; Id. (Pa.) §6925, 6275; Id. (S.C.) §5010; Id. (Tex.) §5025; Id. (Va.) §5017. Of these the Kansas statute is most troublesome.

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13 The required notice has already achieved the dubious distinction of appearing in the Gobbledygook column of the Washington Post on July 1, 1976.

14 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.

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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 the creation of claims and defenses which the Rule is intended to prevent. While there is some dispute over the extent to which this may occur—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.

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 would be for 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. 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 the notice be fact that assignments often take place when the assignor is least concerned with the technical requirements of the law or least able to fulfill the scrutiny of the law examiner, I.e., when its financial fortunes are in decline or when it faces bankruptcy.

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 of consumer 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 an 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 their contracts into compliance.

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 this requested permanent exemption for two-party open-end credit contracts.

[FR Doc. 77-72797 Filed 9-15-77; 8:15 am]
Title 17—Commodity and Securities Exchanges
CHAPTER II—SECURITIES AND EXCHANGE COMMISSION
[Release Nos. 33-8363, 34-18393, 35-20165, AS-220]
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.

While Commissioner Dole concurs in the portion of the Commission's decision denying the permanent exemption 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.

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 rules 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:

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Commission originally issued a proposal in Securities Act Release No. 5668 (34-11880, IC-0110) (FR 4633) on January 4, 1976, requiring issuers to make a footnoto 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 general 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) (FR 22385) 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 certain 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-