



## NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION

Serving Farm, Industrial and Outdoor Power Dealers

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September 13, 2004

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: CAN-SPAM Act Rulemaking, Project No. R411008

The North American Equipment Dealers Association (NAEDA) represents over 4,500 retail agricultural, industrial and outdoor power equipment dealerships in the U.S. and Canada. Collectively, these dealerships represent tens of thousands owners and employees. NAEDA is also an association that has 15 affiliate organizations in the U.S. and 3 in Canada. I am writing on behalf of our members and our affiliate associations.

NAEDA and our affiliates manage organizations that exist to serve and provide value to their members. Organizational membership and participation provide an important resource to our members to achieve a variety of personal, professional, business, social, and educational goals. We strive to offer a variety of current communications, sophisticated educational courses and seminars, and related publications, such as books and periodicals. E-mail is becoming the preferred vehicle to deliver these messages to our membership.

We believe that the Federal Trade Commission (FTC) needs to clarify the applicability of the commercial electronic mail message (“CEM”) definition as it relates to entities such as NAEDA and our affiliates. We request that the FTC’s rule-making provide that e-mail transmitted by associations, such as ours, not be considered CEM under the Act and be exempt from any proposed regulations.

The language of the Act defines “commercial electronic mail messages” as “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service . . .” This definition is clearly directed only at regulating activity undertaken primarily to further the commercial endeavors of businesses. Interpreting the CEM definition to include e-mail communications of organizations and association operating consistent with their purposes would be inconsistent with the statute and the intentions of the Act. We believe that e-mail transmitted by an association to a current member or prospective member, regardless of its commercial content, is not subject to the Act because such communications are “transactional or relationship” messages as defined in Section 3(17)(A) and (B) of the Act.

In conclusion, we urge the Commission to clarify that the definition of "commercial electronic mail messages" is directed at regulating activity that primarily furthers the commercial endeavors. The regulations implementing the Act should specifically provide that the e-mail communications of associations, like ours, are by definition for members who voluntarily join the association and expect to gain access to its programs, products and services not primarily commercial and therefore do not fall within the definition of regulated CEM. Additionally, the regulations should clarify that even where e-mail communications from associations sent to current voluntary members are primarily commercial, they should be excluded from the CEM definition as transactional or relationship messages because such communications are primarily intended to provide information in connection with an association membership and/or deliver goods and services under the terms of an existing member relationship.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Kindinger", written in a cursive style.

Paul Kindinger  
CEO