



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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OCT 23 2003

**MEMORANDUM**

**AGENDA ITEM**  
For Meeting of: 11-06-03

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
General Counsel

Rosemary C. Smith *RCS*  
Acting Associate General Counsel

Mai T. Dinh *MD*  
Acting Assistant General Counsel

Jonathan M. Levin *JL*  
Senior Attorney

**SUBJECT:** Notice of Disposition for Rulemaking on Mailing Lists of Political Committees

On September 4, 2003, the Commission published a Notice of Proposed Rulemaking (NPRM) entitled "Mailing Lists of Political Committees." That NPRM proposed rules to address the rental, sale, and exchange of political committee mailing lists, and the treatment and use of proceeds from such transactions. See 68 Fed. Register 52,531 (Sept. 4, 2003). The Commission held a hearing on the NPRM on October 1, 2003. After considering written comments and the hearing testimony, the Office of General Counsel prepared, for Commission consideration, the attached Notice of Disposition, which would terminate the rulemaking.

**Recommendation**

The Office of General Counsel recommends that the Commission approve the attached Notice of Disposition for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 110, 113, 9004, and 9034**

3 **[Notice 2003 - ]**

4 **Mailing Lists of Political Committees**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of disposition; Termination of rulemaking

7 **SUMMARY:** On September 4, 2003, the Commission issued a Notice of Proposed  
8 Rulemaking seeking comment on proposed rules that addressed the rental,  
9 sale, and exchange of political committee mailing lists, and the treatment  
10 and use of proceeds from such transactions. The Commission is not  
11 amending its current rules and is terminating this rulemaking at this time  
12 for several reasons, including the lack of perceived need by political  
13 committees for guidance beyond what has been presented in Commission  
14 advisory opinions. Further information is provided in the supplementary  
15 information that follows.

16 **FOR FURTHER  
17 INFORMATION  
18 CONTACT:**

Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Jonathan M.  
19 Levin, Senior Attorney, 999 E Street N.W., Washington, DC 20463, (202)  
20 694-1650 or (800) 424-9530.

21 **SUPPLEMENTARY  
22 INFORMATION:**

On September 4, 2003, the Commission issued a Notice of Proposed  
23 Rulemaking ("NPRM"), 68 FR 52531 (Sept. 4, 2003). The proposed rules would have set forth  
24 the conditions under which the proceeds from the sale, rental, or exchange of a political  
25 committee's mailing list would not be contributions to that political committee. The proposed

1 rules would also have prohibited the conversion of an authorized committee's mailing list, or any  
2 proceeds from the rental or sale of the list, to the personal use of the candidate or any other  
3 person. In addition, the proposed rules would have addressed the sale or rental of mailing lists  
4 owned by the authorized committee of a publicly funded presidential candidate. The NPRM  
5 sought comments on these rules generally and asked for comments as to specific aspects of  
6 mailing list transactions. In particular, the Commission asked for comment on whether the final  
7 rules should list specific factors to determine the usual and normal charge for the mailing lists  
8 involved in the transactions, and what those factors should be.

9 The Commission received nine comments in response to the NPRM. These were from:  
10 (1) Charles R. Spies on behalf of the Republican National Committee; (2) Stephen M. Hoersting  
11 on behalf of the National Republican Senatorial Committee; (3) Donald F. McGahn II, on behalf  
12 of the National Republican Congressional Committee; (4) Joseph E. Sandler and Robert F. Bauer  
13 on behalf of the Democratic National Committee, the Democratic Senatorial Campaign  
14 Committee, and the Democratic Congressional Campaign Committee; (5) William W. Hall, on  
15 behalf of the Libertarian National Committee; (6) Lawrence Noble and Paul Sanford on behalf of  
16 the Center for Responsive Politics and FEC Watch; (7) Glen Shor on behalf of the Campaign  
17 Legal Center; (8) Lisa J. Danetz on behalf of the National Voting Rights Institute; and (9) the  
18 law firm of Ryan, Phillips, Utrecht & MacKinnon. At the public hearing on October 1, 2003,  
19 testimony was given by Messrs. Bauer, Hoersting, Shor, McGahn, and Spies, and Marc E. Elias  
20 of Perkins, Coie, LLP. The Commission received no written comments or testimony from list  
21 brokers or other persons whose business primarily involves the sale or leasing of mailing lists.  
22 Copies of the comments and the transcript of the hearing are available on the Commission's  
23 website at [www.fec.gov](http://www.fec.gov).

1           On November >>, 2003, the Commission voted to close the rulemaking on mailing lists  
2 of political committees. The Commission made this decision for several reasons. The written  
3 comments and oral testimony of a number of the commenters indicate that the regulated  
4 community does not perceive a need for further regulation of political committee mailing list  
5 transactions. In general, a number of the commenters believe that Commission advisory  
6 opinions, particularly Advisory Opinion 2002-14 (issued with respect to the rental of mailing  
7 lists of the Libertarian National Committee to other entities), have provided clear enough  
8 guidance on the conditions under which the proceeds from the sale or rental of mailing lists are  
9 not considered contributions to the political committee. The commenters expressed broad  
10 opposition to the proposed rules and questioned the need for such rules at this time.

11           In addition, a number of commenters asserted that there are a significant number of factors  
12 that must be considered in determining the usual and normal charge and whether the transaction  
13 is commercially reasonable. As several commenters stated, appropriate factors may vary  
14 considerably depending upon the circumstances. Because the Commission is not currently in  
15 possession of a factual record adequate to conclude that a particular test is sufficiently flexible  
16 and comprehensive to address all circumstances to which the proposed rules would apply, the  
17 Commission has decided not to proceed with final rules at this time, and to terminate this  
18 rulemaking.

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Ellen L. Weintraub  
Chair  
Federal Election Commission

DATED: \_\_\_\_\_  
BILLING CODE: 6715-01-M