



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Marketing Practices

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Mr. David Nixon, President
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Dear Mr. Nixon:

You have asked whether the Funeral Rule permits a funeral provider that does not offer cremations to omit the "direct cremation" description and price disclosure from its General Price List ("GPL"). You have also asked whether a funeral provider who wants to offer cremation services, but not "direct cremation" as defined by the Funeral Rule, can omit "direct cremation" from its GPL.

The answer to your first question is provided by Section 453.2(b)(4)(ii) of the Rule, which requires a price disclosure for "direct cremation," and each of the other funeral goods or services required to be listed in the GPL, only "if [they are] offered for sale" by the funeral provider.¹ A funeral provider that does not offer cremation therefore need not include the "direct cremation" entry that would otherwise be required in its GPL. However, for the reasons which follow, if a funeral provider offers packages that include cremation, the "direct cremation" entry must appear in its GPL.

Your second inquiry raises the issue of whether that entry likewise might not be required if a funeral provider were to rely on the definition of "direct cremation," in Section 453.1(g) as "a disposition of human remains by cremation, *without formal viewing, visitation, or ceremony with the body present*,"² and offer only cremation packages that include a "formal viewing, visitation or ceremony with the body present." However, such literal reliance on the wording of the definition in isolation from its context would ignore the history and purpose of the Rule, misconstrue the phrase, "if offered for sale," and ultimately violate the Rule's "unbundling" provision.

As the original Statement of Basis and Purpose ("SBP") for the Rule made clear, the Rule is designed to prevent "several practices by funeral providers which limit the consumer's ability to

¹ 16 C.F.R. § 453.2(b)(4)(ii). *See also* 16 C.F.R. § 453.2(b)(4)(ii)(C).

² 16 C.F.R. § 453.1(g) (emphasis added).

make informed, independent choices,” the first and foremost of which was “requir[ing] that consumers purchase ‘prepackaged’ funerals, which may include goods and services which the consumers would not otherwise purchase.”³ Thus, “[t]o ensure that funeral consumers have the ability to select only the goods and services they want to purchase, the rule generally requires funeral providers to ‘unbundle’ the goods and services they offer for sale and offer them on an itemized basis” while allowing providers to “continue to offer ‘package funerals’ for sale as an alternative to itemized purchasing.”⁴

Accordingly, when amending the Rule in 1994, the Commission emphasized that “[t]he Rule’s core purpose is to permit itemization so that consumers may select only the funeral items they desire, and decline unwanted items.”⁵ The Commission explained that “by ‘bundling’ all funeral goods and services in a package, funeral providers had effectively forced consumers to buy unwanted items,” but that the Rule’s itemized price disclosure requirements had alleviated “the primary industry restraint on consumer choice – package pricing.”⁶

Thus, if a funeral provider offers a funeral package that “bundles” cremation with other services, such as a “formal viewing, visitation or ceremony with the body present,” it must give consumers the option of purchasing “direct cremation,” as defined by the Rule, and must include the itemized price in its GPL for direct cremation required by Section 453.2(b)(4)(ii)(C) of the Rule. To conclude otherwise – that the offer of a package of goods and services does not include the offer of an essential element of that package – would contravene the purpose of the Rule. Thus, whenever “direct cremation” is an element of a package offered by a funeral provider, it is “offered for sale,” and Section 453.2(b)(4)(ii) of the Rule therefore requires that a price disclosure for this service appear in the provider’s GPL.⁷

More importantly, a sale of a cremation package that includes more than a “direct cremation” to a consumer who is not also offered an “unbundled” price for direct cremation would violate the “unbundling” provision of the Rule. Section 453.4(b)(1)(i) makes it a Rule

³ SB&P, 47 Fed. Reg. 42260 (1982).

⁴ 47 Fed. Reg. at 42261.

⁵ SB&P, 71 Fed. Reg. 1592, 1608 (1994).

⁶ 59 Fed. Reg. at 1602. Section 453.2(b)(6) of the Rule permits funeral providers to continue to offer funeral packages, 16 C.F.R. § 453.2(b)(6), as the Commission emphasized in the original SB&P and the SB&P for the 1994 amendments. 47 Fed. Reg. at 42261; 59 Fed. Reg. at 1594.

⁷ For this reason, the only circumstance under which a funeral provider would not be required to include an itemized price for direct cremation in its GPL would be if it simply does not offer or sell *any* cremation packages or other cremation goods or services.

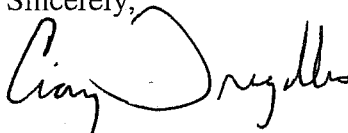
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violation to “[c]ondition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by [the Rule].”⁸ To give a consumer no choice but to purchase a cremation package that includes a formal viewing, visitation, or ceremony with the body present would condition the furnishing of cremation services on these additional services, in direct contravention of Section 453.4(b)(1)(i) of the Rule.

Please be advised that the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinions of those staff members charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are routinely posted on the FTC website at <http://www.ftc.gov/bcp/online/edcams/funerals/staffopinions.shtm>.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Tregillus". The signature is fluid and cursive, with the first name "Craig" written in a larger, more prominent script than the last name "Tregillus".

Craig Tregillus
Funeral Rule Coordinator