



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

Division of Marketing Practices

Craig Tregillus
ctregillus@ftc.gov

Direct Dial: (202) 326-2970
Facsimile: (202) 326-3395

October 2, 2008

Stephen Dirksen, General Counsel
North Carolina Board of Funeral Service
1033 Wade Ave. - Suite 108
Raleigh, NC 27605

Dear Mr. Dirksen:

You have asked under what circumstances a crematory is required to comply with the funeral rule. It is staff's view that a crematory must comply with all of the requirements of the rule if it offers or sells cremation services and any funeral goods, such as caskets, alternative containers, or urns.

As defined in section 453.1(f) of the rule "[a] 'crematory' is any person, partnership or corporation that performs cremation and sells funeral goods." This definition includes each of the two elements – the offer or sale of both "funeral goods" and "funeral services" – that is central to the definition of "funeral provider" in section 453.1(i), which states that "[a] 'funeral provider' is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services."

Notwithstanding the fact that cremation would normally be regarded as a service, your inquiry questions whether the term "funeral services" can encompass cremation, under a strict reading of the definition of that term in section 453.1(j):

'Funeral services' are any services which may be used to:

- (1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and
- (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human remains.

It is clear from the reference to "cremation or other final disposition" in the first subparagraph of the definition that cremation is a "final disposition." Accordingly, the requirement in the second subparagraph is met, because a crematory "supervises" and "conducts" the final disposition. Your inquiry appears to question, however, whether the test in the first subparagraph can be met, perhaps because "care and preparation of the body" is such a common description of a service traditionally offered by funeral homes. You therefore may assume that a crematory cannot also "care for and prepare" bodies for cremation.

Such an assumption is unjustified, and overlooks the history of the rule. Crematories “care for” a body from the moment they receive it, because it has been remitted to their care, and may need to be held or refrigerated for a period of time as required by state law or the availability of the crematory’s retort. Crematories must also take any necessary steps to “prepare” the body for cremation, which may include, for example, removing the body from a shell container or rental casket, as well as removal of pacemakers, metal implants and jewelry.¹

The original Statement of Basis and Purpose for the rule confirms this interpretation, making it clear that the definition of “crematory,” which has not changed notwithstanding the subsequent renumbering of the definition, includes both “funeral goods” and “funeral services.”²

The definition of crematory" in Section 453. 1(g) includes only those persons, partnerships and corporations that both perform cremations and sell funeral goods. The Commission is aware that some crematories do not sell funeral goods, and therefore would not fall within this definition. However, the Commission believes that § 453. 1(g) is consistent with Section 19 of the 1980 Improvements Act which limits the rule's coverage to persons who sell both funeral goods and funeral services.

Consequently, any crematory that offers or sells funeral goods must comply with the same rule requirements as all other “funeral providers.” This includes the requirement to provide price information by telephone upon request, give consumers a General Price List (“GPL”) describing the goods and services the crematory offers for sale, and the requirement that they show consumers a Casket Price List if caskets are offered but not listed in the GPL. It also includes all applicable prohibitions and affirmative requirements of the rule, such as the prohibition in section 453.4(a)(1) against requiring the purchase of a casket for direct cremation, and the affirmative requirement in section 453.4(a)(2) to make an alternative casket available for direct cremations.

As you know, 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 on the Commission or any individual Commissioner. However, they do reflect the views of FTC staff 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,

/s/

Craig Tregillus
Funeral Rule Coordinator

¹ See, e.g., <http://www.funeralplan.com/funeralplan/cremation/beforecremation.html>.

² 47 Fed. Reg. 42260, 42285 (Sept. 24, 1982).