

CANA

Cremation Association of North America

August 10, 1999



COPY

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., NW
Washington, DC 20280

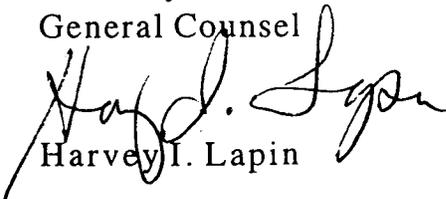
Re: 16 CFR 453-Request for Comments Concerning Trade
Regulation on Funeral Industry Practices

Dear Mr. Secretary:

I am the General Counsel to the Cremation Association of North America ("CANA"). This Comment is being filed with the Federal Trade Commission on behalf of CANA in response to the Request for Comments Concerning Trade Regulation on Funeral Industry Practices on May 3, 1999. CANA appreciates the opportunity to participate in this review process.

Enclosed herewith is CANA's Original Comment, with all exhibits and five copies of CANA's Comment with all exhibits other than the Video tape "Lasting Tributes" contained under Tab 4. CANA did not have enough copies of that tape to include one with every copy of the Comment. Also, enclosed is a computer disk containing the Comment and some of the exhibits in electronic form in the ASCII text format, as well as Windows and DOS. Some of the exhibits were not available to CANA in the electronic format. This electronic format will be E-mailed to the address indicated. Please contact the undersigned at (847) 509-0501 if anything further is required.

Cordially,
General Counsel


Harvey I. Lapin

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COMMENT OF THE CREMATION ASSOCIATION OF NORTH AMERICA
TO THE FEDERAL TRADE COMMISSION ON THE
FUNERAL INDUSTRY TRADE PRACTICES RULE

The Cremation Association of North America ("CANA") is an International Trade Association, with a total membership of 1,178 as of August, 1999. CANA's membership consists of owners and operators of crematories and suppliers to the crematory segment of the death care industry. It is the largest cremation oriented association in the world. CANA was established in 1913 and during its history has been the leader in proposing model guidelines, forms and legislation applicable to cremation. Attached hereto under Tab 2 is a copy of CANA's Code of Cremation Practice which is adopted by every member. In addition, we are enclosing under Tab 3 the other publications currently provided by CANA to members and the general public. Please note that CANA's members promote the concept of memorialization of cremated remains. See the brochures titled "Cremation is Not the End" and "So You've Chosen Cremation" in the enclosed material under Tab 3 which set out CANA's position on memorialization. Also, under Tab 4 of the original comment is a video tape titled "Lasting Tributes" issued in 1990 which describes different forms of memorization.

CANA annually conducts a training program for crematory operators and provides scholarships for operators at smaller cremation operations to attend. This training program is designed to comply with state requirements for the training and continuing education. CANA annually conducts a marketing seminar to assist its members in marketing cremation and promoting the concept of memorilization. CANA currently is working with the Environmental Protection Agency ("EPA") to develop requirements and regulations for crematories to comply with recent clean air legislation. This year CANA and the EPA shared the cost to conduct a stack testing at a CANA member's facility. CANA also holds an annual meeting for its members. The annual meeting program is designed to update members on technical matters, legal matters, new products and new marketing techniques.

CANA has participated with the FTC in the development of the Funeral Industry Trade Practices Rule ("Funeral Rule") since it was originally proposed during the late 1970's. CANA has provided comments, surveys, statistical information and other documentary evidence on cremation related topics during the original hearings that led to the Funeral Rules enactment in 1984 and during the 1987 proceedings that led to the Amended Rule in 1994. CANA reports the trends in cremations on an annual basis. In addition, CANA has conducted surveys of its membership

on various issues involving cremation. Enclosed under Tab 5 is a copy of the statistical information on the number of cremations, trends and predictions issued last year. Also, enclosed are copies of the 1985 Urn Survey Report and the 1996/97 Cremation Container, Disposition and Service Survey.

The Urn Survey was conducted in 1985 when CANA became concerned that some manufacturers of urns were not making them large enough to contain all of the cremated remains left after the cremation. On the basis of the survey, CANA determined that an urn of at least 214 cubic inches would be sufficient to contain cremated remains from 95% of all cremations. CANA believes that all urns manufactured today comply with or exceed these size requirements.

The 1996/97 Cremation Container, Disposition and Service Survey was conducted to update a previous survey, which CANA believes was provide to the FTC during the 1994 Rule Amendment proceedings. The results of this survey concerning containers indicates that metal caskets are rarely used for cremations, most consumers are purchasing a cremation container suitable for cremation and unfortunately approximately 4% of the cremations are performed with no container at all. The results of this survey concerning disposition of cremated remains indicates that 40.7% of the cremated remains are disposed of at a cemetery, 17.8% are scattered as directed by the authorizing party, 35.8 % of the cremated remains are taken home and 5.7% of the cremated remains were not picked up. The results of this survey concerning whether any type of funeral or memorial service was held indicates that 33% of consumers held services prior to the cremation and 43.7% of the balance of consumers held memorial services after the cremation.

Purpose of this Comment

This comment is being filed in response to the Federal Trade Commission's ("FTC") Request for Comments ("Request"), published on May 25, 1999 in the Federal Register. The Request dealt with a number of issues involving the whole Death Care Industry, many of which are not pertinent to CANA's members. Accordingly, CANA's comments will be directed only to the issues stated in the Request that are believed to be applicable to and of interest to CANA's membership. The issues set out in the Request were divided into two classes. One class dealt with general issues and the other class involved specific issues. CANA's comments will be divided in the same manner.

Discussion of the General Issues

(1) Should the Rule be broadened in its scope to include non-traditional providers of funeral goods or services?

CANA's membership consist of crematories, cemeteries, funeral homes, and cremation sales companies. Many of CANA's members are already covered by the Rule, as well as being subject to many state and local laws. Accordingly, CANA has no position on the merits of this issue. However, on a procedural basis, CANA is proposing minor modifications to some of the disclosures and forms required by the Rule to assist consumers in understanding what they are purchasing and to assist its members in explaining the cremation merchandise and services being offered. CANA believes that the present proceedings can be used to make the minor modifications being proposed. It is suggested, however, that the modifications required for disclosing meaningful information about cemeteries, monument dealers and direct sellers may be more substantial and, if necessary, would require a separate rule proceeding. For example, adding those groups to the present Rule will require extensive definitions to be added to the Rule.

2. Non-declinable Fees Currently Allowed Under §453.2(b)(4)(iii)(C)(1) or (C)(2)

CANA is proposing a fee for "basic services" to be charged to consumers as part of a cremation service program. Accordingly, CANA is in favor of leaving this concept intact, other than extending it to cover the basic services of a cremation service company. This will allow a cremation company to charge one non-declinable fee to cover the basic services of the crematory service staff.

4. Revision of the "General Price List"

CANA believes that the General Price List and some of the other documents required by the Rule need to be revised to clarify the information being provided to consumers and to allow providers to comply with the Rule without being subject to fines for technical mistakes. Attached hereto under Tab 6 is a General Price List with disclosures and information which CANA believes provides more meaningful information to consumers. Also, enclosed under Tab 6 is a Statement of Funeral Merchandise and Services Selected. Please note that these forms use the term "merchandise" instead of "goods". The term "goods" was used in the

original and amended Rule, but it is not a term generally used in the industry or in the various state laws applicable to the industry.

CANA believes that the GPL should be provided to consumers when the discussion of prices or specific funeral merchandise or services are being discussed, as the information is more relevant at that time. Accordingly, CANA is recommending the elimination of Section 453.2 (b)(4)(2) of the Rule which requires the GPL to be provided when "the overall type of funeral service or disposition" is being discussed. Many times consumers will inquire in a general way about these topics without being concerned about prices. In fact, as a result of the recent Kennedy tragedy, many Catholics have an interest in finding out more about cremation without being specifically interested in price information at the time of the inquiry.

Discussion of the Specific Questions:

CANA is only commenting on the specific questions which it believes apply to its members and for the convenience of the FTC Staff is using the same numbering system as was used in the Request.

(3) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on funeral providers subject to its requirements?

The primary costs imposed on CANA's members that are subject to the Rule have been for the preparation of the necessary documentation. These costs were for legal assistance in preparation of the forms, printing and training of personnel.

The primary burden on the funeral provider has been the concern about being subject to surprise inspections and penalties for technical violations. For example, several members had significant penalties imposed for technical problems. One penalty was imposed for not noticing that a printing company changed the wording of some of the disclosures, so that the form reprints were not in full compliance with the wording of required disclosures. Another member's technical mistake was not having some disclosures immediately in conjunction with the price for an item. Since the consumer was in fact provided with the necessary information, it did not seem to be such a serious matter that these technical mistakes were made. In addition, some of our supplier members have been subjected to FTC enforcement activities and it is their position that only the seller that actually deals with the consumer should be covered by the Rule.

(a) Has the Rule provided benefits to such funeral providers?

The benefits of the Rule to CANA's members have been in several areas. First, the requirement to itemize has allowed members to market alternatives to consumers. Second, the itemization requirement has required members to review costs for individual items which allowed price adjustments to merchandise and services that may have been priced near to or even below cost.

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on funeral providers subject to its requirements?

CANA suggests the following changes to the Rule:

1. Changing the requirements for disclosures to "substantially" as set out in the Rule rather than being "required". This would allow different providers to use words more appropriate to their businesses. See the forms under Tab 6.
2. Change the "in conjunction" requirements throughout the Rule to allow asterisks or other markings to be placed near the location of the item and the disclosure to be placed as a footnote.
3. Standardize typical forms for the different types of providers covered by the Rule.
4. Set up a specific voluntary procedure for FTC staff personnel to review forms, so the providers can be assured forms are in compliance.

(a) How would these changes affect the benefits provided by the Rule?

These changes would allow more informative disclosures to be used and prevent consumers from being confused by present disclosures that do not make sense in pre-need situations for other providers.

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

There are some conflicts between the Rule and other federal, state, or local laws or regulations. Some states have adopted similar form and disclosure requirements that are different from the Rule requirements. Where there is a definite conflict, the Rule requirements are to be followed unless the state law is more stringent. However, when there is no conflict, the state law may require additional similar form disclosures which lengthen documents that are already too long. For example, the consumer disclosures required by some state laws will require additional disclosures to be added to a contract that is already too long. Attached

under Tab 7 is a copy of the Illinois requirements for disclosures in the Funeral or Burial Funds Law (225 ILCS 45/1a-1). Because of the difference in wording it may be necessary to insert both disclosures in pre-need contracts, making those contracts longer and more confusing to consumers.

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

CANA is not aware of any changes in relevant technology or economic conditions that have had any effect on the Rule.

(7) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on small funeral providers subject to its requirements?

This question is similar to question 3, above. Please refer to CANA's response under that question.

(a) How do these burdens or costs differ from those imposed on larger funeral providers subject to the Rule's requirements?

The basic costs for complying with the Rule form requirements are relatively fixed. Accordingly, larger providers can spread the costs over more locations, so that the cost for preparing these forms on a per location basis is substantially less than for a funeral provider with one location.

(8) To what extent are the burdens or costs that the Rule imposes on small funeral providers similar to those that small funeral providers would incur under standard and prudent business practices?

The burdens and costs are much higher under the Rule than under standard and prudent business practices. Absent the technical requirements of the Rule, a small provider would probably not need legal assistance for their forms.

(9) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small funeral providers?

See the answer to Question 4.

(a) How would these changes affect the benefits of the Rule?

There should be no affect on the benefits derived under the Rule.

(b) Would such changes adversely affect the competitive position of larger funeral providers?

These changes should not affect competition.

(13) Have the relative prevalence of: (a) ground burials; (b) cremations; (c) above-ground entombment; or (d) other dispositions, increased or decreased since the Rule was amended in 1994? To what extent, if at all, has the Rule influenced these changes?

CANA's statistical base shows the increase in cremation from year to year since 1994. See Tab 5. CANA, is a member of the Funeral and Memorial Information Council ("FAMIC") which sponsored the Wirthlin 1995 Study of American Attitudes Toward Ritualization and Memorialization ("Wirthlin Report"). A copy of the Wirthlin Report can be found under Tab 8. This Study was an update of the benchmark study done in 1990. The Wirthlin Report was based on 1,000 telephone interviews and the methodology used for selecting the sample is described at page 3 of the Report. The Wirthlin Report covered the subjects of industry perceptions, funerals, monuments, cemeteries, cremation and pre-arrangement. At page 19 of the Wirthlin Report it is indicated that the primary reasons for selecting cremation are to save money, to save land and because it is simpler. However, no respondents indicated the Rule was a factor.

(15) How, if at all, has the Rule affected the cremation industry? Should the Rule be amended to include within its scope unfair and deceptive practices by crematories, if any?

The Rule has not had a direct affect on the cremation segment of the Death Care Industry. In fact, the increase in cremation over the last 20 years is attributable to other factors. See the discussion about the conclusions reached in the Wirthlin Report under question 13, above. The subject of bad practices by crematories is covered in the CANA Model Law provided to the FTC under Tab 9. The predecessor to the current Model Law has been the basis for cremation laws in about 17 states.

Please note that some of the definitions in the Model Law are different from those contained in the Rule. CANA has requested the FTC to modernized the definitions to comply with the Model Law and current

state laws. In particular, the definition of "Alternative Container" should be changed to indicate the requirements for a rigid container and one safe for employees to handle. CANA also suggests that the term "Cremation Container" would be more descriptive than "Alternative Container". Another definition that could be clarified is the use of the terms "disposition" or "final disposition" throughout the definitions. The cremation of the body is a step in the final disposition, it is not the final disposition. Unfortunately, many state laws confuse this concept and the FTC in the Rule has added to the confusion.

The Model Law provided under Tab 9 was updated this year. It is expected that this trend will increase in the next few years. One of the key provisions of the Model Law is section 7, which deals with the proper "Cremation Procedures". Licensed crematories that do not follow these procedures will be subject to the penalties under the Model Law. While there have been some bad practices followed by a few crematories in the industry, CANA does not believe these practices are prevalent in the cremation segment of the industry.

CANA also believes that improper practices is a proper subject for the states to enact laws. In fact, every state legislature that has updated or enacted laws dealing with cremation has covered the subject of proper procedures and generally provided substantial penalties for violations. See for example, Section 35 of the Illinois Crematory Regulation Act, (410 ILCS 18/35). CANA believes that the enforcement of these laws can be handled more efficiently by state and local governments.

(17) What difficulties, if any, are providers of funeral goods and services experiencing in complying with the Rule?

The primary difficulty imposed on CANA's members who are subject to the Rule has been the costs for preparation of the necessary documentation and training personnel about the requirements. In addition, because the Rule contains very technical requirements, many of which are not applicable to CANA's members, members find it difficult to comply with some of these requirements. Another factor is the problems of dealing with conflicting state laws, which is discussed under the response to question 5, above.

(20) Do consumers who make pre-need arrangements spend less on funerals than those who do not? If so, why? Does receiving price information at the inception of a pre-need arrangements conference contribute to decreased spending? Does it encourage or facilitate comparison shopping?

Consumers who make pre-need arrangements usually spend less on funerals for several reasons. First, pre-need consumers are not subject to emotional distress and can act in a rational manner while selecting the merchandise and service they really want, versus survivors determining what other people might feel is appropriate. Second, consumers usually select package offerings of pre-need merchandise and services which usually are lower in price.

Receiving price information is not a major factor in decreasing spending. Pre-need consumers are making their own arrangements and their major concern is obtaining what they want.

Price information does not, of itself, encourage or facilitate comparison shopping. Arrangements and merchandise can be different so that a consumer may not be able to comparison shop solely on price considerations.

(21) Should the requirement that itemized price lists be given to consumers at the beginning of discussions about funeral arrangements be modified? If so, how? What would be the relative costs and benefits of such a modified provision?

Question 3B used in the Wirthlin Study was "How did you obtain information about the arrangements?" The various responses are summarized at page 4 of Appendix A to the Wirthlin Report under Tab 8. There is no indication that the price information required by the Rule was a factor. CANA understands that surveys prepared for other industry associations indicate that many consumers really are not interested in receiving itemized prices at the beginning of the discussion about funeral arrangements on an at-need sale. On the other hand CANA members actively involved in pre-need sales indicate purchasers are interested in receiving prices information early on in the sale process. CANA believes handing a GPL to consumers before the sales process commences is not a good idea because most consumers do not really review the information at all or until there has been some discussion. Initially, most consumers do not know what merchandise and services they are interested in purchasing, so why would specific prices be of interest until that was determined.

(22) Should the Commission expand the definition of "funeral provider" in order to bring non-traditional members of the funeral industry within the scope of the Funeral Rule's coverage? Are consumers being harmed by the current limitation on the scope of the Rule's coverage?

CANA previously dealt with this issue under the discussion of question (1) the General Issues. CANA does not believe that this proceeding is the proper one for dealing with this issue.

(a) What definition should be used to delineate those entities and individuals subject to the Funeral Rule?

CANA has no comments on this question.

(b) What are the costs and benefits of broader definitions?

CANA has no comments on this question.

(23) Should non-traditional providers of funeral goods and services be subject to only certain provisions of the Funeral Rule?

CANA has no comment on this issue.

(a) If so, to which provisions should they be subject?

CANA has no comment on this issue.

(25) What new fees, prices, goods or services have emerged in the sale of funeral goods and services, since the Rule was amended in 1994?

Separate fees for cremation services, cremation merchandise and other related services are now being charged by some CANA members. CANA has no information concerning other sellers.

(28) Should the requirement for a General Price List be modified? If so, how?

(a) Are there any new fees, prices, goods or services which should be added to the General Price List requirements?

Yes, see CANA's new suggestions for the GPL as outline under the answer to question 4 above.

1. Should the Rule require that the price of private viewing without embalming be included on the General Price List?

CANA has no comment on this issue.

2. Should the Rule require that the price of donating a body to a medical school be included on the General Price List?

CANA has no comment on this issue.

3. Are the Rule's requirements [(Section 453.2(b)(4)(ii)(C)] to disclose on the General Price List the price for direct cremation effective to prevent deception regarding the amount a consumer will pay to have a funeral provider dispose of a body by cremation? Should the Rule also include an express requirement that the disclosed price of "direct cremation" includes the actual price to have a body cremated?

This first part of this question is misstated. The disposition of the remains of a body that has been cremated relates to the final disposition of the cremated remains. The disposition is not through the cremation service itself. In fact, some CANA members have begun to use the term "cremated body" rather than "cremated remains" to explain the process to consumers. On the second question, CANA believes it would be beneficial to consumers to disclose the fee for the cremation process and the basic service fee to provide the full cremation and final disposition of the cremated remains.

4. Should the Rule require that the price of renting a casket in connection with a cremation be included on the General Price List?

CANA has no comment on this issue.

(b) Are there any fees, prices or services which should be deleted from the General Price List?

CANA believes there should be a separate GPL for cremation service companies that deal directly with the public. A proposed GPL for a cremation service company is enclosed under Tab 5.

(c) Are there any other revisions that should be made to the current provisions in the General Price List?

CANA believes changes should be made as outlined under the answer to question 4, above.

(d) For any change made in response to this question, what, if any, would be the costs and benefits to consumers and to funeral providers?

There should be no change in the costs. However, the benefit to the consumer would be the ability to clearly understand what is being disclosed.

(29) The Rule applies to both pre-need and at-need funeral arrangements. Should pre-need and at-need consumers be treated differently? If so, why?

The Rule should apply to both pre-need and at-need funeral arrangements. However, pre-need and at-need consumers should be treated differently because the nature of the sales transaction is quite different. The pre-need consumer is not subject to the emotional distress due to the death of a loved one. The pre-need consumer is not obligated to make the arrangements or purchase merchandise and services. The pre-need consumer is in a position to rationally consider the alternatives and even to compare offerings and prices of other sellers. Many active pre-need sellers market on a guaranteed price basis and typically they are marketing package programs. The result is a pre-need consumer can derive substantial benefits without being forced to make decisions under stress.

(c) Can a funeral provider readily distinguish between a pre-need and an at-need customer or will this complicate compliance with the Rule?

Active pre-need sellers primarily market to consumers in their homes. Passive pre-need sellers do not actively market, so most of their sales will occur at their business locations. Consumers dealing with a passive seller will usually walk in on their own or maybe in response to an advertisement. Since there will be no death involved and no human remains to pick up, the funeral provider should be able to readily distinguish between a pre-need and an at-need customer.

(30) Are there widespread unfair or deceptive practices occurring with respect to the pre-arrangement of and pre-payment for funerals by

consumers? What are these practices? How could these practices be remedied? Are these remedies within the Commission's authority and jurisdiction? Would the benefits to consumers likely to result from such remedies outweigh the likely costs to funeral providers or other industry members?

CANA does not believe there are widespread unfair or deceptive practices occurring with respect to pre-arrangement and pre-payment for funerals or cremation arrangements. Any unfair and deceptive practices that would be engaged in by active sellers would be the same unfair and deceptive sales practices used in at-home sales of any product which is already covered by federal, state laws and regulations including many already under the jurisdiction of the FTC. CANA believes state regulatory authorities are capable of dealing with this area.