



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

Division of Marketing Practices

Laurie Meehan
Attorney

Direct Dial
202-326-3755

VIA FACSIMILE AND U.S. MAIL

March 20, 1997

David Partridge
Meredyth P. Partridge
Regulatory Support Services, Inc.
2608 Duffy Court
Richmond, VA 23233

Dear Mr. Partridge:

I apologize for the delay in responding to your inquiries. You have requested staff opinions or clarifications on the following matters: 1) whether a statement regarding exposure incidents complies with the Funeral Rule; 2) whether prices on separate price lists may differ only with respect to "unique" items offered on a particular list; 3) whether package prices based on items unique to a particular nationality may be offered only to those persons of that nationality; 4) confirmation that funeral homes may charge a fee for a translator; and 5) confirmation that the General Price List and Statement of Goods and Service, with their specific disclosures, should be supplied to the customer in English.

First, you have inquired as to whether the inclusion of the following statement on a Statement of Goods and Services complies with the Funeral Rule:

In the event of an exposure incident, as defined under applicable OSHA regulations, involving blood or other potentially infectious materials from the decedent and a member of the funeral home staff, the funeral home is hereby granted permission to test appropriate samples from the decedent for evidence of infection with Human Immunodeficiency Virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV) and to use the results of such testing for further

evaluation and management of the exposure incident, including disclosure of the test results to the exposed staff member.

The Funeral Rule requires that funeral providers give consumers accurate, itemized price lists, make disclosures regarding certain funeral goods and service and prohibits funeral providers from making certain misrepresentations regarding funeral goods and services. The Funeral Rule does not address exposure incidents or the permissible methods for dealing with such incidents. Thus, we can neither express approval nor disapproval of the proposed exposure incident statement.

Second, you raised several issues in your letter regarding different General Price Lists. The Funeral Rule requires that funeral providers produce a General Price List to consumers that contains an itemized price list and certain disclosures at the beginning of any discussion regarding funeral arrangements. 16 C.F.R. § 453.2(4). Under certain circumstances, funeral providers may offer alternative price lists for special groups. Specifically, funeral providers may offer a different General Price List for funeral goods and services for an infant. Further, a funeral provider may enter agreements with religious groups or burial societies to provide funerals at a discounted price. However, even these alternative price lists must provide all items and disclosures as required on the General Price List. I have enclosed a copy of the FTC publication Complying with the Funeral Rule, which discusses the issue of alternative price lists on page 18.

Your letter questions whether prices must be identical on a General Price List given to all customers versus a General Price List given to customers who are members of a specific group. If you propose offering different General Price Lists for different ethnic groups, based on the inclusion of services which are appropriate for different groups, the prices for "like" items would need to be consistent. Therefore, items that are "unique" to particular services may be included on a particular price list, but the prices for the required itemized goods and services must remain the same. If you are offering discounted prices to a particular group, the prices need not be identical. Further, the discounts that you offer to members of groups may include items unique to that group or items common to all funeral services that you offer.

Third, you requested clarification with respect to offering discounted packages to Asian customers. Under the Funeral Rule, you may offer certain discounted packages to members of groups that you have entered into arrangements with. Note: if these discount prices are provided to the large majority of your customers, the discount prices would be the actual prices and, thus, the General Price List provided to all customers should reflect that. As I mentioned above, I have enclosed the FTC publication Complying with the Funeral Rule which addresses the issue of discounted prices on page 13. If the package or discount is part of a special arrangement with an Asian group, you may provide discounted services, but the price list for those services must still comport with the requirements of the General Price List. Further, the FTC expresses no opinion regarding the legality or propriety of offering separate prices for different ethnic groups under state or federal laws that address discrimination based upon race or national origin, but that are not enforced by the FTC. The opinions expressed in this letter are confined solely to the application of the Funeral Rule to the issues raised.

Fourth, you requested that staff confirm the statement that a fee for a translator is allowed under the Funeral Rule. The FTC does not regulate the prices charged by funeral providers. The purpose of the Funeral Rule is to make price information readily available to consumers and to enable them to do comparative shopping for funeral goods and services. Thus, the services of a translator, if so required, may be subject to a fee or charge by the funeral home under the Funeral Rule. An itemized disclosure on the GPL regarding the fees or charges for translators, however, would be appropriate.

Finally, you requested written confirmation that the required disclosures on the General Price List should be provided in English due to the Rule requirement of specific wording of the disclosures. The Funeral Rule provides for several specifically worded disclosures. Given the difficulty that you raise of translating these terms verbatim into a different language, staff recommends providing the General Price List and Itemized Statement of Funeral Goods and Services in English to comport with the specific disclosures of the Funeral Rule. If you wish, you may also disclose them in other languages, as long as the English disclosures are provided as well.

FTC staff are pleased to hear of the high compliance rate you observed in Virginia.

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.

I apologize again for the delay in responding to your inquiry.

Sincerely,

Laurie Meehan
Funeral Rule Enforcement Staff

Enclosure



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

Division of Marketing Practices

Laurie Meehan
Attorney

Direct Dial
202-326-3755

December 5, 1996

H. Stephen Harris, Jr.
Alston & Bird
One Atlantic Center
1201 Peachtree Street
Atlanta, Georgia 30309-3424

Dear Mr. Harris:

I am writing in response to your request that Federal Trade Commission ("FTC" or "Commission") staff review your client's proposed business plan as it relates to the FTC's Funeral Rule, 16 C.F.R. Part 453. Specifically, you asked for a staff opinion addressing the following issues:¹

1. whether, by virtue of its provision of services, your client would be considered a "funeral provider," as that term is defined in 16 C.F.R. § 453.1(i);
2. whether, and the extent, if any, to which the Funeral Rule, 16 C.F.R. Part 453 is applicable to the proposed services to be offered by your client; and
3. whether, and the extent, if any, to which the Commission would regard any aspect of your client's services to violate the Funeral Rule.

At the outset, it is useful to note that an essential purpose of the Funeral Rule is to "ensure that consumers have access to sufficient information to permit informed purchase decisions, that consumers are not required to purchase items they do not want and are not

¹ Initially you requested a Commission opinion, but later, by letter dated October 3, 1996 you amended your request and now seek a staff opinion.

required by law to purchase and that misrepresentations are not used to influence consumer purchase decisions." Statement of Basis and Purpose, Funeral Industry Practices Trade Regulation Rule, 59 Fed. Reg. at 1593 (January 11, 1994) (reprinted from the 1982 Statement of Basis and Purpose). To a large extent, our conclusion must be driven by this essential purpose of the Rule. In implementing your client's plan, we would urge that the client also keep this uppermost in his or her mind.

I. Is your client a "funeral provider" within the term as defined by the Funeral Rule?

First, the Funeral Rule defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public." 16 C.F.R. § 453.1(i). The Rule further states that "'funeral goods' are the goods which are sold or offered for sale directly to the public in for use in connection with funeral services." 16 C.F.R. § 453.1(h). "Funeral services" are defined as "any services which may be used to: (1) care for and prepare the 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 bodies." 16 C.F.R. § 453.1(j).

As set forth in your letter dated July 31, 1996, your client intends to offer, in part,

- (e) to enter into agreements with funeral providers (which, by entering into such agreements will become members of the Company's "network") obligating those funeral providers to provide the following information and packages to the Company and/or the Company's customers, where requested by any such customer:
 - (i) information specifically requested by any customer, including: (A) the general price list of any network members' funeral goods and services; and (B) the complete price lists of all caskets and vaults offered by any network member; and
 - (ii) funeral packages (at discounted prices where discounts can be negotiated) and/or discounts on some or all of the goods and services on the providers' general price lists; and
- (f) to obtain on behalf of the consumer, at the time of death, from reputable funeral providers, at a discounted price where such can be obtained, the specific funeral-related goods and services selected by the consumer (including any discount applicable to any package selected), or the alternatives chosen by the consumer's family at the time of death, in lieu of those selected by the consumer;

- (g) where requested by the consumer, to provide various services at the time of death, including contacting the selected funeral director, informing the funeral director of the selections made by the decedent, making other arrangements such as travel arrangements, flower delivery, lunches and lodging;

Although several of the proposed offerings of your client may be within the definition of "funeral services" under the Funeral Rule, nothing in your correspondence indicates that your client will sell or offer to sell "funeral goods." Thus, because the Funeral Rule defines a funeral provider as an entity selling or offering to sell "funeral goods and funeral services", your client, operating as described in your letter, would not be considered a "funeral provider" as that term is defined in 16 C.F.R. § 453.1(i) (emphasis added).²

II. Is the Funeral Rule applicable to your client's proposed service?

To address your second question, we begin by noting that the Funeral Rule requires funeral providers to provide accurate price information, make certain required disclosures, avoid misrepresentations, and/or comply with preventive requirements. 16 C.F.R. § 453.1, et seq.

Even though your client, under the facts described in your letter, is not technically covered by the Funeral Rule, some of the proposed services raise issues with respect to the disclosures required under the Funeral Rule. For example, your client proposes to inform "the consumer of his or her rights under the Funeral Rule, including the right for the consumer at any time (and the right of the consumer's family) to obtain written general price lists of all goods and services of any funeral home, including, but not limited to, the individual prices on such general price list of all component goods and services of any package which the consumer may have selected." The Compliance Guide states, however, that "[funeral providers] must offer any package funerals in addition to and not in place of the required itemized prices." See 16 C.F.R. § 453.2(b)(6). Your client's proposed service implies that consumers may select packages and then, upon request, receive itemized pricing. Even though your client intends to negotiate on behalf of consumers with funeral providers for discounted packages, it is important that consumers receive the itemized price list along with any package price list for the services and goods. Further, in the context of your client's role as an agent for a consumer, your client must relay all Funeral Rule disclosures, approvals and/or preventive requirements to the consumer.

If, and to the extent to which, your client serves as an agent for any funeral provider in the network of providers, your client would be directly responsible for providing consumers the necessary disclosures and price lists for that funeral provider and complying with all other requirements under the Funeral Rule.

² This does not mean that your client would not be within the general jurisdiction of the FTC under Section 5(a) of the FTC Act, 15 U.S.C. § 45 (a), to take action against persons engaging in unfair or deceptive acts or practices in or affecting commerce.

III. Do any of your client's proposed services violate the Funeral Rule?

A general review of the services that your client proposes to offer, as described in your letter, does not reveal any practice that would clearly violate the Rule. However, your client proposes to provide consumers with a wide range of information and services regarding funeral goods and services, and because the proposal is broad and generally states that it will comply with the Funeral Rule, we are unable to determine at this time whether any of your client's activities will, in practice, violate the disclosure requirements of the Funeral Rule. Once your client actually offers these services and provides information to consumers, the Commission would be better able to determine whether your client's proposed plan, as implemented, violates the Funeral Rule in any respect.

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.

Sincerely yours,

Laurie Meehan
Funeral Rule Enforcement Staff