



September 26, 2023

*VIA ELECTRONIC SUBMISSION*

Federal Trade Commission  
Office of the Secretary  
Constitution Center  
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)  
Washington, DC 20580  
<https://www.regulations.gov>

Re: Additional Comments Regarding Funeral Rule ANPR, Project No. P034410

Dear Commissioners:

The New Jersey State Funeral Directors Association, a nonprofit professional trade association representing 937 licensed funeral directors in more than 600 funeral provider locations throughout New Jersey, offers the following comments following the Federal Trade Commission Funeral Rule Workshop held in person and virtually on September 7, 2023.

We thank the Federal Trade Commission staff for considering our perspective on the operating conditions and needs of the funeral industry as regulated by the Commission and as intertwined with individual State-based statutes and regulations.

We are grateful for your fostering dialogue with the NJSFDA, as an industry stakeholder, and for considering our input regarding any Funeral Rule modifications.

Sincerely,

George R. Kelder Jr., CFSP  
CEO/Executive Director

Enclosure

Cc: Frank R. Galante, NJSFDA President  
Tara M. Scarponi-Danniballe, NJSFDA Legislative and Law Committee Chair  
Samantha Minchello, Government Affairs Representative

### **Online GPL Disclosure and Electronic Distribution**

While the NJSFDA maintains its previously submitted position from its January 6, 2023 comments that the placement of a business's prices on its website is both a commercial and marketing decision that is best left up to the funeral provider itself, we acknowledge the Commission's interest in pursuing this initiative through a regulatory amendment. As such, the NJSFDA would support a rule change to require all funeral homes that maintain a website and/or sell products or services online to prominently display their current General Price List by simply embedding a PDF or a clearly labeled link directly to the GPL on the home page or main landing page of the provider's website, in addition to the current distribution provisions. The Rule should specify that the PDF or clearly labeled link be conspicuously displayed on the home page or main landing page of the provider's website to provide maximum visibility to the consumer, with exact placement location at the discretion of the funeral provider.

If this Rule is amended, funeral providers that comply should be offered a safe harbor from FTC Undercover Price Shoppers, as the availability of an online GPL 24 hours a day, 7 days a week in a prominent place on their websites supersedes any timing triggers that previously may have resulted in violations of the Rule.

The NJSFDA also maintains that the decision to conduct such business operations via electronic means should be determined by a funeral provider and not legislated by a regulatory body. The responsiveness and adaptability of a funeral provider to address consumer requests for price lists through electronic means demonstrates a best business practice for a 21<sup>st</sup> century funeral provider and fosters competition. Consumers who engage funeral providers who are not operating in a fashion commensurate with their technological level can select another business that can better respond to them in their desired manner. In this way, the Rule should not seek to legislate business best practices.

Because social media pages and platforms are volatile and do not offer providers full control of their presence on the platform, these ancillary forms of communication should not fall under the Funeral Rule. Each platform establishes its own limits to the amount of content that can be included, how such information is aggregated, whether links can be embedded, and how long content can be accessed, among other restrictions. Additionally, business and personal profiles can be copied and hacked, rendering both consumers and providers vulnerable to unscrupulous actors.

The Rule currently requires that the GPL be given to anyone who asks, in person, about funeral goods and services or the prices of such goods and services (16 CFR 453.2(b)(4)(i)(A)) and requires the CPL and OBCPL to be distributed prior to discussions about those items (16 CFR 453.2(b)(2) and 453.2(b)(3)). If contacted by a consumer over the phone, a provider is required to supply accurate price information from the price lists (16 CFR 453.2(b)(1)).

With electronic communication readily available, the NJSFDA supports a proposal to permit funeral providers to offer to send copies of their GPL, CPL and OBCPL to individuals who inquire about funeral goods and services, provided it is through a medium that is mutually acceptable to both parties. Additionally, we agree that a provider should be exempt from this requirement if they prominently make their price lists or clearly labeled links to these documents available on the home page or primary landing page of their website.

### **Basic Service Fee(s)**

The NJSFDA agrees that funeral providers should have the continued option to either not charge a non-declinable professional service fee or charge only a single non-declinable fee. Contemporary consumer requests, however, clearly call for the Commissioners to consider a new variable option of reduced non-declinable fee(s) in addition to the above.

The FTC's current definition of the non-declinable fee includes the nine basic non-declinable charges typically found within a funeral selected more than 40 years ago:

#### **Variable Non-Declinables**

##### **The 9 Basic Non-Declinable Charges**

*permitted for typical/full funerals*

1. Responding to initial request
2. Conducting the arrangement
3. Preparation of biographical and statistical data
4. Examination of financial settlement options
5. Preparation of permits and authorizations
6. Coordination with third parties
7. Preparation and placement of obituary
8. Retention and care of remains
9. Staff, equipment and facility overhead

##### **The 6 Reduced Non-Declinable Charges**

*permitted when brief additions are requested above and beyond minimal offerings*

1. Responding to initial request
2. Conducting the arrangement
- Preparation of biographical and statistical data
- Examination of financial settlement options
3. Preparation of permits and authorizations
4. Coordination with third parties
- Preparation and placement of obituary
5. Retention and care of remains
6. Staff, equipment and facility overhead

##### **The 3 Minimum Non-Declinable Charges**

*permitted when the remains or disposition are handled elsewhere or by others*

1. Responding to initial request
- Conducting the arrangement
- Preparation of biographical and statistical data
- Examination of financial settlement options
- Preparation of permits and authorizations
2. Coordination with third parties
- Preparation and placement of obituary
- Retention and care of remains
3. Staff, equipment and facility overhead

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We believe to better address contemporary consumer choice and to encourage competition the rule should permit up to two additional versions of the non-declinable fee:

- a. A **Reduced Non-Declinable Fee** consisting of the **six (+/-)** bolded charges, which would be used for families that desire an immediate burial or direct cremation plus several other goods and services.
- b. And a **Minimum Non-Declinable Fee**, consisting of the **three (+/-)** bolded charges, which would be applicable for families that arranged for cremation or disposition elsewhere and/or who are now seeking a memorial event within a provider's facilities post disposition.

As clearly articulated by the majority of panelists throughout the day, the inability to appropriately and competitively charge for services that vary greatly between each consumer has become problematic and an unintended price consequence of the “non-declinable fee” originated out of the Rule.

### **General Price List Third-Party Fee and Embalming Disclosures**

#### **Third-Party Fee Disclosures**

Funeral providers should not be required to list third-party crematory fees, or any third-party fees such as permits, death certificates, etc., in the description and price for direct cremation.

First, the GPL represents the pricing set by the funeral provider and these third-party fees are not under the direct control of the provider. Second, the Rule does not currently require cemetery and mausoleum charges to be disclosed in this manner nor does the current proposal include such disclosure of cemetery fees. Lastly, there may be state-specific laws and rules that affect a funeral provider’s ability to comply with such a requirement. For example, New Jersey has an existing rule that prohibits the inclusion of such fees in the Rule’s required minimal packaged services (NJ Regulation N.J.A.C. 13:36-1.9(d)). The reason being that New Jersey like many other states statutorily prohibit funeral providers from owning and operating crematories/cemeteries and vice versa.

The NJSFDA also does not support a federal mandate to include a typical price range for such additional third-party fees, which are outside of the control of the funeral provider, as it is a hardship on the provider to be accountable for the charges and fees of other parties that often change without sufficient notice.

This Association does not believe third-party fees should be a federal mandate but regulated by the states. New Jersey regulations currently require that where a price is advertised, a specific delineation of additional services or merchandise which may be necessary must be disclosed (N.J.A.C. 13:36-5.12(i)).

While the NJSFDA contends that such a disclosure requirement should be regulated by the states, we offered, in our initial January 6, 2023 comments, sample language reprinted here should the Commission proceed with such a federal additional fee disclosure requirement when the actual cost of the cremation process is not included in the package price.

Language to remove noted **[thus]**; Language to add noted **thus**.

#### 16 CFR 453.2 Price disclosures

- (a) No Change.
- (b) (b)(1) thru (3) No Change.
- (4) General Price List.

- (i) No Change.
- (ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:
  - (A) thru (B) No Change.
  - (C) The price range for the direct cremation offered by the funeral provider, together with:
    - (1) thru (3) No Change.

**(4) Place the following language in immediate conjunction with the prices shown for direct cremations: “These charges for direct cremation do not include the actual cost of the cremation process which is a crematory charge that will be added to your total cost as a cash advance item.”**

### **Embalming Disclosures**

The NJSFDA supports a Rule amendment to require a funeral provider to disclose its embalming policy in close proximity to its description and price for embalming services. Our Association recommends the following embalming disclosure language options be considered for incorporation into the Rule:

Language to remove noted [thus]; language to add noted **thus**.

*a. If a state DOES NOT have an embalming requirement:*

[Except in certain special cases,] [e]Embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with **an open casket** [viewing]. If you do not want embalming, you usually have the right to choose an arrangement that does not require you pay for it, such as direct cremation or immediate burial.

*b. If a state DOES have an embalming requirement:*

[Except in certain special cases,] **In (Insert State Name)**, embalming is [not] required by law **or regulation as stated in (cite specific statute or regulation and include statutory or regulatory text)**. Embalming may **also** be necessary, however, if you select certain funeral arrangements, such as a funeral with **an open casket** [viewing]. If you do not want embalming, you usually have the right to choose an arrangement that does not require you pay for it, such as direct cremation or immediate burial.

*c. If a state DOES NOT have an embalming requirement, but the funeral provider DOES have a policy requiring embalming:*

[Except in certain special cases,] [e]Embalming is not required by law. **However, this funeral home requires embalming when you select arrangements such as (insert specific instance).** Embalming may **also** be necessary, however, if you select certain funeral arrangements, such as a funeral with **an open casket** [viewing]. If you do not want embalming, you usually have the right to choose an arrangement that does not require you pay for it, such as direct cremation or immediate burial.

- d. *If a state DOES have an embalming requirement, but the funeral provider has a policy prohibiting embalming:*

[Except in certain special cases,] **In (Insert State Name),** embalming is [not] required by law **or regulation as stated in (cite specific statute or regulation and include statutory or regulatory text).** Embalming may **also** be necessary, however, if you select certain funeral arrangements, such as a funeral with **an open casket** [viewing]. If you do not want embalming, you usually have the right to choose an arrangement that does not require you pay for it, such as direct cremation or immediate burial. **This funeral home does not perform embalming due to (insert religious or other reason).**

### **New Trends and Forms of Disposition**

Given that Natural Organic Reduction is currently only permitted in seven states and Alkaline Hydrolysis in 22, and although allowed many states do not yet have a single operating facility, references to new forms of disposition such as these should be regulated by the states.

The Rule, as currently constituted, and the Commission, through its public comments, have made it clear that its regulatory interest and jurisdiction is limited to providers of funeral goods and services, not forms of disposition. In many instances, similar to cremation, such disposition alternatives would be provided by third-party entities, which are outside the regulatory scope of the FTC and may not currently be permitted within every state.

We believe the Commission should pause any rulemaking surrounding new forms of disposition. In the future, based on consumer acceptance data, consideration could then be given to making disclosure language relating to alternative forms of disposition consistent with any required disclosure language currently in place or being considered for direct cremation and immediate burial.