



January 6, 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: NJSFDA Comments Regarding Funeral Rule ANPR, Project No. P034410

Dear Commissioners:

The New Jersey State Funeral Directors Association, a non-profit professional trade association representing 915 licensed funeral directors in over 600 funeral provider locations throughout New Jersey, offers the following public comments regarding the Funeral Rule Advance Notice of Proposed Rulemaking.

We thank the Federal Trade Commission and 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.

Thank you for 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: Alison Perinchief Reinhard, NJSFDA President  
Tara Scarponi-Danniballe, NJSFDA Legislative and Law Committee Chair  
Althea D. Ford, Director of Government Relations

**1. Should the Rule be changed to require (a) all funeral providers (b) funeral providers that maintain websites or (c) funeral providers who sell funeral products or services online, to prominently display their GPLs, or a clearly labeled link to their GPLs, on their websites?**

While the NJSFDA maintains its position 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 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 is prominently 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.

Should this Rule be changed, funeral providers 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 on a conspicuous place on their website supersedes any timing triggers that previously may have resulted in violations of the Rule.

**2. Should the Rule require (a) all funeral providers, (b) funeral providers that maintain a website, or (c) any funeral provider who shows pictures and/or descriptions of caskets, alternative containers, or outer burial containers on their website, to prominently display their CPLs and/or OBCPLs, or a clearly-labeled link to these documents, on their websites?**

Notwithstanding our previous statement regarding the inclusion of pricing on websites as a commercial and marketing decision and not a matter to be regulated, the NJSFDA would support a rule change to require that the CPL and OBCPL be prominently displayed on a provider's website if the funeral provider shows photos and/or provides descriptions of caskets and outer burial containers on their website. If a provider does not provide such information on their website, the displayed GPL which is required to include price ranges for caskets and outer burial containers, should suffice. As the Rule already requires CPLs and OBCPLs to be given to consumers before discussing or showing these items or pictures of these items, funeral providers would have these price lists available at the funeral home for consultation with consumers.

**3. Should the Rule require all funeral providers that maintain a website to display a prominent statement on their website that the providers' GPLs, CPLs, and OBCPLs can be requested and to include a link, button, email address, or other electronic mechanism for people to use to request the GPL, CPL, and/or OBCPL? If so, should the providers be required to respond to such requests within any particular time?**

Should the Rule be amended to require GPLs to be prominently displayed on a funeral provider's website, this strategy alone would be sufficient to provide consumers with transparency and timely notice of a funeral provider's prices. Codifying a process for funeral providers to respond to consumers within a specific timeframe puts an undue burden on funeral providers to incessantly monitor email accounts for GPL requests. Additionally, with spam filters, email phishing and other technological influences that hinder timely communication between two parties, enacting such a rule could have unintended consequences and lead to compliance violations that are the result of technological factors outside of the provider's control.

**4. Would a requirement that funeral providers send their GPLs, CPLs, and/or OBCPLs to consumers via electronic means and format present any challenges or costs for compliance or present any benefits to consumers?**

The NJSFDA 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. Consumers who engage funeral providers who are not operating in a fashion commensurate with their technological level and needs can select another business that can respond to them in their desired manner. In this way, the Rule should not seek to legislate business best practices.

The provision of a price list via electronic means requires funeral providers to have equipment (physical or digital) and know how to successfully operate email accounts, scan documents, and upload files. The costs associated with this would vary depending on the funeral provider's personal familiarity with utilizing technology.

**5. Should a funeral provider that maintains a presence on social media be required to post the provider's GPL and/or clearly-labeled links to the provider's CPL and OBCPL on its social media account?**

The NJSFDA contends that the Rule should require a funeral provider that maintains a social media presence to post its GPL and/or CPL and OBCPL on its social media account, provided that account is the primary online platform used by the funeral provider. For example, if the funeral provider only utilizes a Facebook page (not a website), then any requirements for online price disclosures should be applicable to the funeral provider's Facebook page. Ultimately, there should be a single, primary online location under the direct control and

operation of the funeral provider where a consumer can access the regulated price lists and information. We believe the home page or main landing page of funeral provider's website to be that place. Absent a website, any required online price disclosures should be made applicable to the primary online platform that the funeral provider uses to communicate with the public. No other platforms should then have to reference price information to consumers.

**6. Should the Rule contain other provisions that will embrace new platforms and technologies as they develop so that both providers and consumers can benefit from new distribution methods without requiring a Rule change?**

The Rule should not attempt to contain provisions that will embrace new platforms and technologies, but rather focus on clearly communicating the expectations for price transparency by funeral providers utilizing the applications and platforms available today. With technology changing constantly, adopting legislation specific to future technological enhancements can result in an overly prescriptive rule that becomes obsolete quickly. We believe this to be overreaching by attempting to regulate what is currently unknown.

The Rule should not seek to include trending technological or electronic communication methods, but rather consider only electronic communication methods that are currently under the direct control and operation of the provider.

**7. Should the Rule mandate that funeral providers be required to post a GPL, CPL, or OBCPL, or a clearly-labeled link to these documents, on any electronic, online, or virtual method or platform that it uses to post or otherwise make available information about its products or services, sell products or services, or communicate with consumers or potential consumers on a non-individual basis?**

Social media pages and platforms (TikTok, Yelp, Facebook, Twitter, Instagram, SnapChat, YouTube, etc.) are volatile and do not offer providers full control of their presence on the platform. 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, how long content can be accessed, among others. Additionally, business and personal profiles can be copied and hacked, rendering both consumers and providers vulnerable to unscrupulous actors seeking to defraud and misrepresent themselves as the funeral provider to the public.

Websites have been established as a relatively stable means of online marketing and communication that is under the direct control and operation of a provider or its agent (i.e., third-party vendor) who dictates the content and design of the medium.

However, should a social media page/platform be utilized in lieu of a website, a funeral provider should be required to identify a single, primary online location under their direct control and operation where the consumer can access all the regulated price lists and information.

**8. Would requiring a funeral provider to provide the price lists online (which could be defined to include a social media account or other electronic, online, or virtual method or platform) impose any challenges or costs for businesses, including small businesses, or provide any benefits to consumers?**

As a print supplier for funeral providers in New Jersey, the NJSFDA is aware that the average funeral provider's annual print cost for GPLs and SFGSS are approximately \$516, or \$361,377 per annum statewide. When considering the proposed requirement for the regulated printed documents to also be made available online, the compliance cost will be in addition to that amount when factoring the time and labor charges imposed on providers by third-party vendors to update website links or embed PDFs or to implement software coding changes on the funeral provider's website.

A challenge for providers is to ensure that any changes to the price lists are posted online in a timely manner. If there is any requirement imposed to require price lists to be posted online, significant consideration must also be given to the timeframe by which any changes to the document are successfully posted to the online platform. Refer to our response to Question 13 for additional detail.

**9. Should the Rule require all funeral providers (with or without websites) to offer to send their GPLs, CPLs or OBCPLs electronically to any persons who ask about the provider's goods or services?**

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 now 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 their website.

**10. Should the Rule require all funeral providers to electronically distribute their GPLs at the start of any arrangements discussion that is not in-person, unless a hard copy has already been provided?**

According to the current Rule at 16 CFR 453.2(b)(4)(i)(A), funeral providers are required to distribute the GPL *upon beginning discussion of the prices of funeral goods or funeral services, the overall type of funeral service or disposition, or specific funeral goods or funeral services offered by the funeral provider* (emphasis added). We believe the Rule already establishes a requirement for the GPL to be distributed prior to the start of arrangements that

are not conducted in-person. In the interest of providing clarity to the Rule, we are in support of a Rule change requiring the electronic distribution of GPLs at the start of any arrangement discussion that is not in-person.

**11. Should the Rule require that, if the consumer is making selections for a funeral arrangement online, then the provider would need to offer a prominent link to the GPL before allowing the consumer to proceed with selections?**

If the GPL is required to be prominently displayed on the home page/main landing page of a funeral provider's website, the funeral provider should not be required to offer a prominent link to the GPL before allowing the consumer to proceed with selections. This suggestion is overly prescriptive in regulating a singular method for achieving the goal of price disclosure. The Rule should require that consumers be provided access to the GPL prior to making selections for a funeral arrangement online. The funeral provider should be given flexibility in how they comply with such a Rule requirement.

**12. Should distribution of electronic copies of the CPLs and OBCPLs also be required if discussing or showing those items in an arrangements discussion that is not in-person, or if the consumer is making selections concerning those items while shopping online?**

According to the current Rule at 16 CFR 453.2(b)(2)(i) and 453.2(b)(3)(i), the funeral provider must offer the CPL and OBCPL *upon beginning discussion of, but in any event before showing caskets or other containers* (emphasis added). We believe the Rule already establishes a requirement for the CPL and OBCPL to be distributed prior to discussing those items in an arrangement discussion that is not in-person or showing those items in any format. In the interest of providing clarity to the Rule, we are in support of a Rule change requiring the electronic distribution of the CPL and OBCPL upon beginning discussion of, but in any event before showing such items and should apply whether the items are being shown as part of an arrangements discussion or displayed for online shopping.

**13. Should the Rule mandate how quickly funeral providers should be required to update the GPLs, CPLs, and OBCPLs posted on their websites, social media sites or on other electronic sites?**

As referenced previously in our response to Question 8, should a timeframe be established for posting required price lists online, the NJSFDA recommends that funeral providers be given 30 days to update the GPLs, CPLs, and OBCPLs posted online, as this would provide sufficient time for funeral providers that utilize third-party vendors to manage their websites or social media pages to communicate and coordinate the necessary changes.

**14. Should funeral providers be required to send an electronic copy of the Itemized Statement of Funeral Goods and Services to people who do not meet with a funeral provider in person before agreeing to services?**

According to the current Rule at 16 CFR 453.2(b)(5), funeral providers are required to give an itemized written statement for retention at the conclusion of the discussion of arrangements. As proven throughout the pandemic, we believe the Rule already establishes a requirement for an itemized written statement to be distributed to consumers who do not meet with a funeral provider in-person. In the interest of providing clarity to the Rule, we are in support of a Rule change requiring funeral providers to send an electronic copy of the itemized statement of funeral goods and services selected to consumers who do not meet with a funeral provider in-person before agreeing to services.

**15. Should any funeral providers be exempted from Questions 1, 2, 5 & 6?**

Funeral providers who do not have websites or do not have or maintain any social media presence should be exempted from the requirements discussed in Questions 1, 2, 5 and 6.

**16. Should all funeral providers be required to list third-party crematory fees in the description and price for direct cremation on the GPL?**

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 control of the provider. Second, the Rule does not currently require cemetery fees to be disclosed in this manner and the current proposal does not include the disclosure of cemetery fees. Lastly, there may be state-specific laws and rules that may impact 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)).

**17. Should funeral providers that do not include the cost of third-party crematory fees in the price for direct cremation on the GPL be required to include a statement on the GPL in close proximity to the price for direct cremation that purchasers will be required to pay an additional third-party crematory fee and include a typical price range for the third-party crematory fee?**

To the extent that the Rule does not require a statement and a typical price range for third-party crematories under immediate burial, nor is the Commission proposing that it should under this ANPR, we do not believe such a requirement should exist for crematories. Additionally, the NJSFDA would 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.



**18. Should all funeral providers be required to list additional items related to direct cremation or immediate burial not included in the price for direct cremation or immediate burial on the GPL?**

The NJSFDA does not believe this 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)). Refer to Question 21 for our response regarding the inclusion of the actual cost of the cremation process in a direct cremation package.

**19. Should funeral providers be required to include such items in close proximity to the price for direct cremation or immediate burial?**

The NJSFDA does not believe this 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)).

**20. Should all funeral providers be required to list on the GPL in close proximity to the cost for direct cremation and immediate burial a statement listing additional fees that the funeral home knows consumers may incur when they select a direct cremation or immediate burial and the typical price range of such fees, if such fees are not included in the price for direct cremation or immediate burial?**

As noted in our response to Question 18 and 19, the NJSFDA believes any requirement for a statement listing additional fees should not be a federal mandate but regulated by the states. Additionally, we would 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.

**21. Should funeral providers be required to include a statement in close proximity to the price for direct cremation or direct burial on the GPL that says that additional fees may apply?**

While the NJSFDA contends that such a disclosure requirement should be regulated by the states, we offer the following language 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)(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.”**

**22. Should the Rule be amended to clarify when funeral providers may charge a reduced basic services fee? Should the definition of direct cremation and immediate burial in the Rule be amended to allow those offerings to include limited viewings, limited visitations, or other services?**

The NJSFDA agrees that funeral providers should have the option to either not charge a non-declinable professional service fee or charge a non-declinable fee and, in certain circumstances, reduced non-declinable fee(s).

The FTC’s current definition of the non-declinable fee includes the nine basic non-declinable charges typically found within a funeral selected 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

© 2022 New Jersey State Funeral Directors Association, Inc. All rights reserved.

In addition to the basic non-declinable fee, we believe there should be up to two additional versions of the non-declinable fee:

- a. The **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. The **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.

### 23. Should the Rule language be amended to specifically address alternative forms of disposition, including alkaline hydrolysis and natural organic reduction?

References to new forms of disposition 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. Additionally, in many instances 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.

**24. Should the Rule be amended to state that providers of alternative forms of disposition, such as alkaline hydrolysis and natural organic reduction, could offer direct or immediate services with a reduced basic services fee?**

References to new forms of disposition 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. Additionally, in many instances 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.

**25. Should the Rule be updated to provide exceptions for the requirements to provide alternative containers and disclosures related to alternative containers for funeral service providers using new methods of disposition or direct disposition that do not require a container?**

The NJSFDA does not have a position on Question 25.

**26. Should additional disclosure language relating to alternative forms of dispositions be added to the Rule?**

Although the NJSFDA does not have a position on Question 26, consideration should be given to making disclosure language relating to alternative forms of disposition consistent with any required disclosure language for direct cremation and immediate burial.

**27. Are there provisions of the Rule that are in tension with alternative forms of disposition?**

The NJSFDA does not have a position on Question 27.

**28. Should the embalming disclosure contained in section 453.3(a)(2)(ii) of the Rule be amended to ensure consumers understand the specific circumstances in which embalming may be required under state law?**

The NJSFDA's response to this question is thoroughly explained in our response to Question 29.

**29. Should the Rule be amended to modify the disclosures about embalming to require providers to state on the GPL the correct law for the jurisdictions in which it operates?**

The NJSFDA recommends the following embalming disclosure language options to be incorporated 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).**

**30. Should a funeral provider be required to disclose its policy regarding embalming on the GPL in close proximity to its description and price for embalming services?**

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.

Refer to our response to Question 29 for recommended embalming disclosure language based on a provider's state requirement and established business policy.

**31. Should funeral providers that do not offer embalming services to any customers, due to their religious traditions or for other reasons, be required to include an embalming disclosure on the GPL?**

To ensure uniformity across all GPLs, the NJSFDA supports a Rule amendment to require all funeral providers to include an embalming disclosure on their GPL. Refer to our response to Question 29 for recommended embalming disclosure language based on a provider's state requirement and established business policy.

**32. Should the GPL, CPL, and/or OBCPL requirement be changed to improve readability for consumers? If so, what changes could be made to the format that would make the documents easier for consumers to comprehend and for businesses to know they have complied with the Rule?**

The NJSFDA recommends several vocabulary changes be adopted to remove antiquated and often perceived as religious terms and to better align with the terminology that resonates with today's funeral service consumer:

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

*16 CFR 453.1 Definitions.*

(a) thru (f) No Change.

(g) Direct cremation. A "direct cremation" is a disposition of human remains by cremation, without formal **gathering** [viewing, visitation,] or **funeral** [ceremony] with the body present.

(h) thru (j) No Change.

(k) Immediate burial. An "immediate burial" is a disposition of human remains by burial, without formal **gathering** [viewing, visitation,] or **funeral** [ceremony] with the body present, except for **accompaniment to the place of disposition** [graveside service].

(l) Memorial **event** [service]. A "memorial **event** [service]" commemorates [is a ceremony commemorating] the deceased without the body present.

(m) Current: **Funeral** [ceremony]. A "**funeral** [ceremony]" **commemorates** [is a service commemorating] the deceased with the body present.

(n) thru (p) No Change.

*16 CFR 453.2 Price Disclosures.*

(a) No Change.

(b)(1) thru (3) No Change.

(4) General price list.

(i)(A) thru (C) No Change.

(ii)(A) thru (G) No Change.

(H) Use of facilities and staff for **gathering** [viewing];

(I) Use of facilities and staff for funeral [ceremony];

(J) Use of facilities and staff for memorial **event** [service];

(K) Use of **equipment and accompaniment of staff to place of disposition** [for graveside service]

(L) thru (M) No Change.

(iii) thru (iv) No Change.

(5) thru (6) No Change.

*16 CFR 453.3 Misrepresentations.*

(a)(1) No Change.

(a)(2)(i) Not represent that a deceased person is required to be embalmed for:

(A) Direct cremation;

(B) Immediate burial;

(C) A closed casket funeral without **gathering** [viewing or visitation] when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: “Except in certain special cases, 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 to pay for it, such as direct cremation or immediate burial.” The phrase “except in certain special cases” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

Note: The embalming disclosure recommendation stated here is a very basic change to the embalming disclosure based solely on the desire to update antiquated vocabulary. We provide a more thorough recommendation for the embalming disclosure language and its location in our responses to Questions 29 and 30.

**33. Should the Rule provide more specific requirements to ensure that the mandatory disclosures are clear and conspicuous?**

The NJSFDA does not have a position on Question 33.

**34. Should the Rule be changed to require that the information required to be included on the GPL, such as the prices for the 16 products and services (if offered) and the mandatory disclosures, be placed before other content (such as packages) on the GPL?**

The NJSFDA does not have a position on Question 34.

**35. Should the Rule be changed to require that the mandatory disclosures on the price lists be in the same font, color, and size as the rest of the content on the price lists?**

The NJSFDA believes that any established requirement should not be overly prescriptive and limit a funeral provider’s ability to creatively design their price lists.

**36. Should the Rule require that the GPL, CPL, and OBCPL be in machine-readable format?**

The NJSFDA contends that the Rule codifies various consumer protections with a cost to the funeral provider that has been incorporated into their operating budget since the Rule’s inception. With the current proposal’s emphasis on requiring pricing to be available online and because price lists and itemized statements are no longer typewritten, but rather professionally printed and/or generated digitally through computer code, the expense to update and make these materials accessible will be significant. In 2022, Thanexus, Inc., a professional funeral service human resource cooperative, produced printed and single-page PDF GPLs, CPLs, and OBCPLs for providers handling 22% of all deaths in New Jersey. Based on Thanexus data, the initial cost to each provider to print and produce amended GPLs and itemized statements to comply with the anticipated Rule changes is just over \$516 per provider. This figure does not include any additional expenses associated with engaging a third-party vendor to make software coding changes and/or upload revised prices/price lists to each provider’s websites.



Requiring a singular, machine-readable format further complicates consumer price availability, at an added cost to the provider and with a benefit that is not realized by the consumer. Instead, such a requirement only provides myriad opportunities for data to be aggregated and collected by parties not focused on specific instances of price transparency and disposing of the dead. Should a consumer require additional accommodations over and above a PDF of online price lists, they are able to interface with a funeral provider over the phone, via email and in person.

**37. Are there any funeral provider practices that disproportionately target or affect certain groups, including lower-income communities, communities of color, or other historically underserved communities?**

The NJSFDA does not have a position on Question 37.

**38. Should any of the provisions of the Funeral Rule be amended to avoid disproportionately impacting or affecting certain groups, including people living in lower-income communities, communities of color, or other historically underserved communities?**

The NJSFDA does not have a position on Question 38.

**39. Are there any special issues or concerns related to the disclosure of price information when consumers use benefits provided by programs to help families of veterans and low-income consumers cover funeral expenses?**

The NJSFDA does not have a position on Question 39.

**40. Are there circumstances in which funeral providers should be required to make price lists, disclosures, and statements of services selected available in languages other than English?**

The NJSFDA believes that there should be no requirement to convert GPLs, SFGSS and disclosures into any language other than English. Such supplemental GPLs, SFGSS and disclosures converted into other languages should remain an optional commercial and marketing decision that is best left up to the funeral provider itself.