

FTC FUNERAL RULE – ANPR SUMMARY (OFDA)

WHAT: The Federal Trade Commission (“FTC”) is considering whether to initiate a rulemaking proceeding to amend its Trade Regulation Rule entitled “Funeral Industry Practices Rule,” also known as the “Funeral Rule.”

HOW DID WE GET HERE: On February 14, 2020, the Commission initiated a review of the Rule. The Commission solicited comments on (1) the economic impact of, and the continuing need for, the Funeral Rule; (2) the Rule's benefits to consumers; and (3) the burden it places on industry members subject to the requirements, including small businesses. The Commission also asked specific questions about a number of topics, including whether funeral providers should be required to post their price list information online.

Based on the comments received in response to the Rule Review, the Commission now seeks additional comment on possible modifications to the Funeral Rule.

COMMENT TIMELINE: The comment period began on November 2, 2022 and concludes on January 3, 2023 – a 60-day comment period.

OFDA ACTION ITEMS/REQUEST: Should OFDA provide comment on any of the following rules as (1) a single entity or; (2) share OFDA’s comments with NFDA to combine with NFDA’s comments

WHAT ARE THE ISSUES UP FOR COMMENT: The commission seeks comments on the following issues/rules:

(1) online and electronic price disclosure

- Sub-Topics for Comment
 - First, the Commission seeks comment on whether it should change the Rule's price list disclosure provisions to require funeral providers to prominently display either their GPLs or a prominently labeled link to their GPLs on their websites.
 - Second, the Commission seeks comment on whether it should change the Rule's CPL and OBCPL distribution requirements to require funeral providers to prominently display either their CPLs and/or OBCPLs on their websites, or a clearly labeled link to these price lists.
 - Third, the Commission could consider a Rule change to require all funeral providers that maintain websites to display a prominent statement that users can request the providers' GPLs, CPLs, and OBCPLs with a link, button, or email address for people to use to request the price list or lists; whether to include a requirement that funeral providers must respond to online requests for price lists within a particular time frame.
 - Fourth, the Commission is also considering whether to include social media pages or other new technological or electronic communication methods within the scope of covered websites for the purposes of any Rule modifications. For example, the Commission could require a funeral provider with a social media page to link to the provider's main website or provide an email address or other online mechanism for a user to request price list information.

- Fifth, the Commission seeks comment on whether the Rule should be modified to require all funeral providers (regardless of whether they maintain websites) to offer to send their GPLs, CPLs, or OBCPLs electronically to any persons who ask about the providers' goods and services, including those who ask for a copy of any of its price lists. This could include requests by telephone, text, email, weblink, social media, fax, U.S. Mail, or other new communication methods that may emerge in the futures.
- Sixth, another approach the Commission is considering would require all funeral providers to give electronic copies of their GPLs at the beginning of any arrangement discussion or process that does not take place in-person unless a hard copy has already been provided. For example, if the arrangements are discussed on the telephone, the provider would need to send an electronic copy of the GPL to the consumer before continuing the conversation (if the consumer has not yet received the information).
- Seventh, if electronic distribution is required, the Commission is considering whether the Rule should include a requirement concerning how often providers should update the electronic GPLs, CPLs, and OBCPLs. The current Rule requires a funeral provider to list an effective date on its price lists.
- Eighth, the Commission is considering another potential modification to the Rule's preventative requirements to include electronic means for distribution of the statement of funeral goods and services selected. Currently, the Rule requires funeral providers to give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements.

(2) Disclosure of Third-party Crematory Fees and Other Costs on the GPL

Sub-Topics for Comment

- In addition to third-party crematory fees, the Commission wishes to explore whether the Rule should be clarified to state when other fees, not included in the price of the services, should be disclosed on the GPL.
 - For example, these other fees may include separate charges for the weight of the deceased, removal of a medical device, storing remains, expedited cremation or burial, death certificates, county permits, medical examiner permits, and supplies and procedures related to infectious disease control.
- Should all funeral providers be required to list third-party crematory fees in the description and price for direct cremation on the GPL?
- Alternatively, 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?
- 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?
- In addition to the proposed requirements in above, should funeral providers be required to include such items in close proximity to the price for direct cremation or immediate burial?
- 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?
- 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? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the burdens and benefits to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

(3) Reduced Basic Services Fees

Sub-Topics for Comment

- 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 another other services? Why or why not? If so, what limited viewing, limited visitations, or other services should qualify for the reduced basic services fee under this definition?
- The Commission is considering clarifying in the Rule that funeral providers may charge a lower basic services fee for forwarding and receiving remains, immediate burial, and direct cremation, if they wish, because of the limited use of the funeral provider's facilities and staff time generally associated with those services. In addition, the Commission is considering modifying the definition of direct cremation and immediate burial to allow those offerings to include limited viewings or visitations or other additional services and seeks comments on whether this modification should be made and, if so, how.

(4) New Forms of Disposition

Sub-Topics for Comment

- Should the Rule language be amended to specifically address alternative forms of disposition, including alkaline hydrolysis and natural organic reduction? Why or why not?
- 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? Why or why not?
- 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? Why or why not?
- Should additional disclosure language relating to alternative forms of dispositions be added to the Rule? If so, what should the disclosure say? How would the additional disclosure language impact the overall consumer experience or create any benefits or costs to consumer
- Are there provisions of the Rule that are in conflict with alternative forms of disposition? If so, what are those provisions, and how are they in tension with alternative forms of disposition?

(5) Embalming Disclosure

*Clarification of embalming disclosure

Sub-Topics for Comment

- 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?
- 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
- 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? In addition or in the alternative, should a funeral provider be required to inform consumers that it does not possess refrigeration facilities, which may limit a consumer's options to avoid embalming under state law, or add fees related to third-party refrigeration facilities, in close proximity to its description and price for embalming services?
- 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? Why or why not?

(6) Price List Readability

* The Commission is interested in obtaining additional comment on how the itemized price lists could be improved to maximize consumers' access to accurate itemized price information in ways that minimize the burden on funeral providers, particularly small providers.

*The Rule currently requires the GPL to list the itemized prices for 16 specific goods and services, if offered, as well as several mandatory disclosures and placement requirements for those disclosures. Other than those requirements, the Rule currently does not mandate a specific format for the GPL.

Option 1: One alternative under consideration would require all information that must be included on the GPL—such as the required prices for 16 products and services (if offered) and all mandatory disclosures — to appear before any non-required information, such as details about packages or bundles, caterings, or cemeteries.

Option 2: Under another approach, the Rule would specify ways to make sure the mandatory disclosures are clear including requirements that they be in the same font, color, and size as the rest of the content in the price lists.

Option 3: One other option under consideration would require any price list posted online or conveyed electronically be in machine-readable format so third parties could collect and aggregate this information.

(7) The impact on people in underserved communities

Sub-Topics for Comment

- 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? If so, why and how?
- 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? If so, why and how?
- 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?
- 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? For instance, should funeral providers be required to provide itemized price lists in any language they use for advertising, or in any language they use to make funeral arrangements? What would be the effect of such a requirement, and what costs and benefits would it entail?