



Cremation Association of North America

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The Honorable Lina Khan, Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Funeral Rule ANPR, Project No. P034410

The Cremation Association of North America represents more than 3,500 funeral homes, cemeteries, crematories, and suppliers to the death care profession. CANA members assert that the current Funeral Rule is sufficient as written and that posting pricing online should be a business decision. However, should the FTC require online posting, we respectfully request that you take the following into consideration:

#### **CANA Position—Summary**

1. Whether and how funeral providers should be required to disclose pricing online or through electronic media.  
**Posting a PDF of the General Price List on websites will address concerns. Funeral providers without websites should not be required to create a website. There is no need to require posting on social media channels or create an enforceable time frame, as prompt responses are good business practice.**
2. Whether funeral providers should be required to disclose third party crematory or other fees on the GPL  
**Third party crematory fees are cash advance items and outside the control of the funeral home, therefore should not be required on the GPL.**
3. Whether the Rule's requirements regarding reduced basic service fees should be amended  
**Yes, providers should be able to charge and reduce a basic service fee. It's good for the consumer.**
4. Whether the Rule should be amended to account for new forms of disposition  
**Consider disposition neutral language. Suggest a change in nomenclature from "direct cremation" to "direct disposition" and add to the definition of alternative container and update to include "alternative forms of disposition."**
5. Whether the Rule's embalming disclosure requirements should be amended  
**Embalming disclosures are as is. Refer to state law. Add refrigeration in the language too, if refrigeration is to be offered.**
6. Whether the Rule should be changed to improve the readability of the price lists  
**Regulated at state level. Leave this as it is. Let the states and ADA enforce any sort of disclosure and readability.**
7. Whether the changes should be made to the Rule to avoid negatively impacting underserved communities.  
**Allow funeral providers to provide translations, where possible and in a good faith effort.**

## Current Practice of CANA Member Cremation Providers—Results of Member Survey

- Do you have a website, social media accounts, etc.? *Only one respondent did not.*
- Online pricing—do you post pricing on website, social media, others? *55% of respondents post pricing online. 41% actively sell funeral goods and services on their website.*
- Do you provide your GPL via email upon request? *Yes, in fact email is preferred over mail or phone and on par with distributing in person.*
- Is the primary purpose of a funeral home website—sales, share obituaries, promote funeral or memorial service information, sell flowers, trees or other memorial items, sell preneed, sell at-need.
  - *82% agreed that the primary purpose of their website is to share obituaries and promote specific funeral service information to support the consumers.*
  - *37% agreed that the primary purpose of their website is to sell at-need or preneed funeral goods and services*
- Should online disclosure apply to 1) all providers, 2) those with a website, or 3) those who complete sales online? *The majority of CANA members agree that the requirement should apply to all providers.*
- Should the FTC require responses in a particular timeframe? *No, funeral providers are business people seeking to attract new business. A timeframe set up the federal government would be arbitrary at best and the fines and fees would be detrimental at worst.*

## CANA Member Comments

CANA asked its members how the current implementation of the GPL helps or hurts their businesses and received the following array of responses.

- Transparency has to be our goal. If we “lie” by not disclosing, we lose the community support we desperately need
- Our families apparently choose us by reputation, location, and what is seen on our website. Always willing to share price with those that ask, however, most of our area families choose a funeral provider by past use or reputation
- The GPL helps tremendously because the families feel as if we are being 100% open and honest about what we are providing them.
- Confusion! Families come to us in a time of need and grief; the last thing they need is a confusing document placed before them. If posting prices online becomes a requirement, the document has to be revised to be more user friendly and transparent or it will be a detriment and distraction to the arrangement conversation.
- It can be difficult to read for a non-industry person, however, the FD should be able to guide their family through it without issue.
- The requirement should be specific to company websites and not necessarily apply to all “electronic media,” which is not defined in the question. Not all firms engage in other “electronic media,” or, as in the case with Facebook, only use Facebook for posting social events, not obits.

## CANA Position—Detailed Comments

*The following text elaborates on key questions posed by the FTC.*

### Impact on small businesses

Each of the questions posed in the Advanced Notice of Proposed Rulemaking asks about the impact on small businesses. Because the FTC defines small business as 1.) 1,500 or fewer employees and 2.) less than \$38.5 million in revenue, more than 80% of funeral providers are considered micro-businesses under the FTC definition. CANA members have an average of 10 employees, serve 350 families a year, and generate an average of \$2 million dollars in revenue per year per location.

The proposed technological or administrative requirements place new financial burdens on these micro-businesses. Expenses for either dedicated full- or part-time staff to oversee information technology needs— or hiring a third-party consultant or service to do so—can start at \$20,000 and exceed \$100,000 per year. These funeral providers will need to significantly increase the costs of their service to adopt this new business expense.

New requirements can accelerate the continued loss of dedicated small business owners in the funeral profession. Currently more than 80% of all funeral provider firms are independently owned. Larger private or publicly traded corporations enjoy the benefits of economies of scale that make these technological and administrative expenses easier to absorb. Selling independent businesses to corporate consolidation is a common trend within funeral service. This trend is driven by demographics, staffing shortages, and shrinking profit margins. Baby boomer owners' desire for retirement is leading to a transfer of ownership to family members, employees, or corporations seeking to expand their market share. Adding new, costly regulations will impact their ability to compete and add yet another reason for small business owners to sell their businesses to corporations, which could hamper competition. Add to that state and local regulatory hurdles to licensing and permitting, inflation and staffing shortages—all problems impacting the entire US economy—and affecting the viability of these small businesses.

The FTC currently receives relatively few complaints against funeral providers—less than 1% of total received complaints—but expanding the scope of federal oversight means more opportunity for violations based on misunderstandings. This could hasten the demise of small, rural funeral providers. Fees charged per violation—\$43,280 to \$80,000 or more—have the potential to crush an independent funeral provider and reduce local business competition.

The FTC's research found that 80% of funeral providers depend on website publishers that supply free templates and content management in exchange for marketing services (Tribute Technologies, Batesville, PartingPro, Consolidated Funeral Services, among others). As the FTC staff noted, the websites support email, contact forms and—sometimes—chat functionality. These features support the primary purpose of funeral home websites, which CANA members report is to share service information and obituaries.

### 1. Online price disclosures

Should online price posting become required, limit to posting on websites as a PDF, available for download and retention and distribution by email upon request.

Funeral providers use websites and social media for two primary purposes: 1) Sharing obituaries, service details and directions to the service location or link to the live stream service. These services are chosen by the consumers as they make arrangements. 2) Marketing funeral services they provide to support consumer decision-making.

The FTC argues that since funeral homes post obituaries and service information on their websites, they should also post pricing. However, these functions serve different audiences. Potential attendees of funeral services need information about an upcoming service, such as location, time and obituary details. If the family agrees, the funeral home provides this as a community service to notify mourners where to gather in support. This is not a transaction: the costs of services are unrelated. Posting pricing information on the funeral home website will not interfere with this information but may give the mistaken impression that the funeral home website is primarily a sales tool, possibly offending some during their period of mourning. Allowing businesses to decide how, where, and when the pricing information is displayed is critical to promoting a competitive environment. CANA members who currently post pricing online report that consumers may mistakenly assume that pricing is the only consideration when selecting a funeral provider.

The FTC proposes that funeral providers should be required to post pricing on social media. A business can control how their website functions but has no control over the functionality of social media platforms. Social media users are limited by the functionality of the social media platform—which can change without notice or input from individual users. Social media is not designed to host price lists and requiring a business to adapt the platform for that purpose is an unfair burden. Such a requirement will instead drive these businesses off social media channels and interrupt community and consumer connections.

While funeral providers can agree that it is not difficult to post a PDF of the GPL online, they know it cannot create the consumer protection the FTC seeks. The FTC's goal of educating the consumer cannot be achieved with a price list without the context of what is included or accompanying images to depict the item. Online providers find that more than 90% of shopping carts are abandoned due to the complexity of planning a funeral. When a consumer follows up with funeral providers, they ask questions and indicate a group of family members or friends are involved in decision making or creating a budget before proceeding with purchases.

## 2. Disclose Third Party fees

Third party cremation and other fees—such as death certificate fees, burial transit permit fees, and more—are considered cash advance items, because an outside firm or agency, not the funeral provider, sets those prices. It is unfair to make funeral providers responsible for disclosing these prices and risk a violation and fine. There is no potential harm for consumers, as the third parties will likely only ever raise prices over time and funeral providers will absorb any difference in price until required disclosure is implemented.

Under the proposed changes, a business that owns its own crematory is not required to list a separate crematory fee. By requiring disclosure of third-party crematory fees, competitors are placed at a disadvantage where one appears to charge more for cremation and the other can include that cost in a basic service fee or direct cremation fee.

## 3. Allow reduced basic fees

Regulations on non-declinable basic service fees should remain the same and do not need to be itemized any further. It is a business decision to discount fees and services, which businesses often will provide in support of deceased children, veterans, and low-income families.

## 4. New forms of disposition

There are five parts to a direct cremation: 1) removal of deceased from place of death, 2) secure, refrigerated storage of deceased, 3) cremation and related paperwork and authorizations, 4) return of cremated remains to person with the right to control cremation via USPS or pick up in person; and, optionally, 5) a funeral, memorial service or celebration of life before during or after the cremation. The Funeral Rule assumes that a “direct cremation” excludes the fifth component; however, CANA consumer research has disproved this assumption. Families always do something, just not always through the funeral provider. By establishing this “package,” the FTC unintentionally divides funeral practice into cremation and burial—a divide the profession continues to struggle with today. CANA proposes the FTC eliminate the direct cremation requirement on the GPL and make the Funeral Rule disposition-neutral by replacing the terms “direct cremation” or “direct burial” with the more inclusive “direct disposition” defined as any state-sanctioned disposition method with no additional services provided by the funeral provider.

The existing Funeral Rule sufficiently accommodates new forms of disposition with itemization on the GPL, CPL, and OBCPL. For direct disposition, no casket or outer burial container is required for Alkaline Hydrolysis or Natural Organic Reduction, unless a cemetery requires a vault. For visitation and/or funeral services, the consumer may elect to use a casket, shroud, or clothing prior to disposition.

## 5. Embalming disclosures

CANA suggests no changes to embalming disclosures.

## 6. Price List readability

The FTC should delegate price list readability to states, as existing state law is more detailed than the Funeral Rule.

The FTC is concerned about the ability for consumers to compare and contrast funeral providers; however, there are numerous online aggregators and other consumer tools available. Even CANA’s website makes an effort to educate consumers on the decision-making and methods to compare providers.

Standardizing the GPL would inhibit innovation and customer service. Given that the Funeral Rule is infrequently reviewed, providers may be unintentionally prohibited from adapting to future consumer preferences, technological advances, and more. While required core elements make sense, prohibiting or limiting additions through standardizing the General Price List reduces competition.

Regarding machine readability and accessibility, any further regulation could potentially be in conflict with the ADA requirements which are regularly revised and would place a significant burden on funeral providers.

## 7. Impact on underserved communities

As Benjamin Franklin said, “...in this world, nothing is certain except death and taxes.” Funeral service is unique, in that no other profession serves everyone from every community. CANA members hold contracts

with the government to serve indigent communities, partner with organizations dedicated to reconciling the lost with their communities, and hold services to remember the unclaimed. Funeral providers may specialize in specific communities' religious iconography, cultural practice, and support repatriation with hundreds of embassies.

Regarding underserved populations, requiring professional jargon or specific terms on the price lists may confuse non-native English speakers. These terms are not served by common translation tools. The current Funeral Rule Offenders Program fails to account for cultural differences for immigrant, religious, and ethnic communities, which may result in different reactions to pricing information introduced at the beginning of arrangements. Flexibility on timing of delivery of pricing would help underserved populations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barbara Kemmis', written in a cursive style.

Barbara Kemmis, Executive Director  
Cremation Association of North America