



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

Division of Marketing Practices

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Ms. Lisa Carlson, Executive Director  
Funeral Ethics Organization  
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Ms. Holly Stevens  
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Dear Ms. Carlson, Ms. Stevens, and Mr. Gilligan:

This staff opinion addresses the question of whether there are any circumstances under which a funeral provider may charge a fee for its basic services and overhead that is less than the non-declinable basic services fee listed in its General Price List (“GPL”).<sup>1</sup> The Funeral Ethics Organization (“FEO”) questions whether the Funeral Rule permits a lower fee, the National Funeral Directors Association (“NFDA”) argues that the Rule has always permitted a reduced fee for certain services, and a group advocating home funerals contends that the Funeral Rule should allow consumers to make limited use of the services of a cooperating funeral home without being required to pay the full non-declinable basic services fee listed on its GPL.<sup>2</sup>

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<sup>1</sup> The Rule permits a funeral provider to charge a basic services fee to recover its costs “in arranging any funeral” for its overhead and the services of the funeral director and staff. 16 CFR §§ 453.1(p); 453.2(b)(4)(iii)(C). If this fee is non-declinable, the provider must disclose either that the fee will be added to the cost of the funeral goods and services selected, or that it is included in the price of the provider’s caskets, and that clients who provide their own caskets will be charged the same fee. 16 CFR §§ 462.2(b)(4)(iii)(C)(1)-(2).

<sup>2</sup> This group has prepared a manual for consumers who wish to care for the dead at home. Home Funeral Committee Manual Publishing Group, *Undertaken With Love: A Home Funeral Guide for Congregations and Communities* (2007), available at <http://www.homefuneralmanual.org/homefuneralfinalfinal.pdf>. Their request notes that a number of state statutes require that a licensed funeral director be involved, however minimally, thus forcing

The FEO questions whether, if the basic services fee listed on a GPL is non-declinable, the funeral provider may charge less than the full amount of that fee for four services that must be itemized in the GPL: forwarding remains, receiving remains, direct cremation, and immediate burial. The NFDA counters that because these four specialized services require fewer “services of funeral director and staff” and entail less use of facilities and overhead than traditional funeral arrangements, requiring a funeral provider to charge its full basic services fee would be unjustified. The NFDA adds that the Commission never previously indicated that the Rule requires a funeral provider to charge its full non-declinable basic services fee for these four services, and that it has been the long-standing practice of many funeral providers to charge a reduced basic services fee for each of these four services.

The FEO’s question arises from the wording of a disclosure required by the Rule when the basic services fee is non-declinable. Section 453.2(b)(4)(iii)(C)(1) of the Rule mandates that the following prescribed statement appear in the GPL under the price and description of the services provided if the basic services fee is non-declinable:

*This fee* for our basic services will be added to the total cost of the funeral arrangements you select. (*This fee* is already included in our charges for direct cremation, immediate burials, and forwarding or receiving remains.)<sup>3</sup>

The FEO asks whether the two parallel references to “this fee” mean that a non-declinable basic services fee must be the *same* for all funeral arrangements, including the four services at issue that are specifically mentioned in the second sentence of the statement. We think not, for three reasons.

First, the Rule uses the term “this same fee” when that is what it means. Section 453.2(b)(4)(iii)(C)(2) of the Rule specifies that when a funeral provider elects to include its non-declinable basic services fee in the price of its caskets, it must be the very same fee it charges to consumers who do not purchase a casket: “This *same fee* shall be added to the total cost of your funeral arrangements if you provide the casket.”<sup>4</sup> The use of two distinct terms, “this fee” and “this same fee,” therefore, suggests that the two are not necessarily synonymous.

Second, reading the Rule to prohibit a reduced basic services fee for forwarding remains, receiving remains, direct cremations and immediate burials, would be inconsistent with a core

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consumers who want home funerals to pay the funeral provider’s non-declinable basic services fee. Some states require the funeral director to do little more than sign the death certificate, while other states simply mandate that a funeral director either “be present” at the final disposition, or that the final disposition be conducted “under the supervision of” a licensed funeral director.

<sup>3</sup> 16 CFR § 453.2(b)(4)(iii)(C)(1) (emphasis added).

<sup>4</sup> 16 CFR § 453.2(b)(4)(iii)(C)(2) (emphasis added).

purpose of the Rule, which is to enable consumers to purchase only the funeral goods and services they want by requiring funeral providers to "unbundle" their offerings. During the era of industry-wide package pricing that was prevalent before the Rule took effect, consumers who wanted only direct cremations or immediate burials often had no choice but to pay the same package price as consumers who wanted a traditional funeral. Requiring funeral providers to charge the same non-declinable basic services fee for a full traditional funeral as for these four more limited services similarly would require consumers to pay for facilities and services that they would not necessarily use or receive.

Finally, we note that this interpretation is entirely consistent with prior staff views on the issue. The Final Staff Compliance Guidelines for the original Rule make it clear that funeral providers may include "**any charges**" for their professional services in their prices for forwarding remains, receiving remains, direct cremation and immediate burial:

b. Forwarding and Receiving Remains, Direct Cremations and Immediate

Burials: Sections 453.2(b)(4) (ii) (A)-(D). The Rule requires funeral providers to disclose their prices for forwarding and receiving remains, direct cremations and immediate burials. Unlike the remainder of the goods and services which must be disclosed on the General Price List, **any charges** for the professional services of the funeral provider should be included in the total price of these four types of services.<sup>5</sup>

For these reasons, it is staff's view that the Rule permits funeral providers to reduce their basic services fees for forwarding remains, receiving remains, direct cremations,<sup>6</sup> and immediate burials,<sup>7</sup> in order to reflect the proportionate reduction in facilities overhead and services of the funeral director and staff required to provide them.

Prior staff opinions have stated, and we re-emphasize here, that a funeral provider may **not** include a reduced or discounted non-declinable basic services fee in any discount package of

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<sup>5</sup> 50 Fed. Reg. 28062, 28068 (July 9, 1985) (emphasis added). The accompanying Analysis of Public Comments Received on Staff Compliance Guidelines notes that the original Rule modified the proposed definition of "services of funeral director and staff," and the final Guidelines added this clarification, in response to a concern of the Continental Association of Funeral and Memorial Societies ("CAFMS") that services associated with forwarding or receiving remains, cremation, and immediate burial would be "packaged" into the basic services fee. 50 Fed. Reg. 28081, 28087 (July 9, 1985). The clarification barred any such "packaging" by specifying that a funeral provider should include "any charges" for its professional services in the price listed on its GPL for these four services.

<sup>6</sup> "A 'direct cremation' is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present." 16 C.F.R. § 563.1(g).

<sup>7</sup> "An 'immediate burial' is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service." 16 C.F.R. § 453.1(k).

goods and services it offers, but must include in the price of the discount package the full non-declinable basic services fee listed in its GPL.<sup>8</sup> As another staff opinion has stated, however, that forwarding remains, receiving remains, direct cremation and immediate burial are not “packages,” and thus are not subject to this prohibition.<sup>9</sup>

The Rule does not address home funerals because they were not considered at the time of the initial rulemaking proceeding or the subsequent amendment proceeding. Home funerals are analogous to the four basic services, however, because they likewise involve reduced or minimal use of a funeral provider’s facilities and staff. As a matter of enforcement policy, therefore, and consonant with the fundamental goals of the Rule, staff will not object to a reduction in the basic services fee for home funerals if it is commensurate with the limited use of the provider’s facilities and services.

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 on the Commission or any individual Commissioner. However, they do reflect the views of FTC staff charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are routinely posted on the FTC website at <http://www.ftc.gov/bcp/online/edcams/funerals/staffopinions.shtm>.

Sincerely,

/s/

Craig Tregillus  
Funeral Rule Coordinator

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<sup>8</sup> Staff Opinion 09-1 (Feb. 17, 2009), *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion09-1.pdf>; Staff Opinion 97-3 (Apr. 16, 1997), *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion97-3.pdf>.

<sup>9</sup> Staff Opinion 07-6 (Aug. 21, 2007), *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion07-6.pdf>.