

**BEFORE THE
FEDERAL TRADE COMMISSION**

Funeral Rule Regulatory Review)
Project P034410)

**COMMENTS OF THE
NATIONAL FUNERAL DIRECTORS ASSOCIATION**

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ON THE
FUNERAL RULE REGULATORY REVIEW**

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I. INTRODUCTION

The National Funeral Directors Association ("NFDA") submits the following comments to the Federal Trade Commission regarding the FTC's request for comments on the regulatory review of the Funeral Industry Practices Rule , 16 CFR Part 453 (the "Funeral Rule").. These comments are being submitted in accordance with the FTC Request for Public Comments issued on February 14, 2020.

NFDA is the world's funeral service association, serving more than 20,000 individual members who represent nearly 11,000 funeral homes in the United States. In its role as the national representative of the funeral profession, NFDA has been actively involved in all facets of the FTC's development and implementation of the Funeral Rule. We have worked with numerous representatives of the FTC over the past 36 years to educate funeral homes about the requirements of the Funeral Rule and to increase compliance. During that time span, NFDA has also advocated for modifications to the Funeral Rule to make it more effective, easier to comply with and enforce, and applicable to today's funeral markets.

Toward that end, NFDA is submitting these comments on the 22 Funeral Rule issues designated by the Commission. We have also drafted and attached as Exhibit A to these comments a copy of the Funeral Rule showing all of the modifications we discuss in these comments. It is our sincere hope that these proposed modifications will be closely considered by the FTC Staff and serve as a starting point on how to make the Funeral Rule a more effective and up-to-date regulation for funeral service and the funeral consumer.

II. COMMENTS

1. *Need: Is there a continuing need for the Rule? Why or why not?*

Instead of asking if there is a need for the Funeral Rule, a better question would be whether there was ever a need for the Funeral Rule.¹ That issue was raised by FTC Chairman James C. Miller when the Rule was approved by a 3-1 vote of the Commission in September, 1982. Chairman Miller's dissent, which has proved to be prophetic, goes directly to the issue of whether there was ever a need for a Funeral Rule:

"The basic reason for my opposition to today's action, is the lack of evidence in the record. That record is woefully inadequate for a proceeding that has lasted 10 years. In my view, the Commission does not have a reliable description of the industry, much less a working knowledge of how it operates. The facts presented are often contradictory, are heavily anecdotal, and may not be representative of industry practices. From what description can be gleaned from the record, two theories seem to fit equally well: (a) That the industry is operating quite effectively; and (b) that the industry is vitiated with market imperfections crying out for governmental intervention. Nor do we have any basis in the record to conclude that the rule approved today will adequately deal with alleged market imperfections *assuming* they exist."

* * *

"Moreover, certain provisions may actually harm consumers. For example, the only empirical evidence we have of the effects of forced unbundling (in Minnesota) suggests increased costs to consumers."

* * *

"The Commission's own 'baseline' study, in particular, should have been entered into the record, even that would have meant a few months delay while the Commission accepted public comments on it.

Portions of the baseline study seriously challenge the theory of market imperfections that is implicit in the Commission's action."

* * *

In conclusion, I fear that the Commission has deceived a very vulnerable segment of American consumers. The Commission's

¹ The FTC has only examined this question once - - four years after the Rule had taken effect back in 1988. That review was based only upon three years of data on the effects of the Funeral Rule. The resolution of that first Funeral Rule Review is discussed in this response.

action is deceptive because it raises expectation of lower prices for funerals and better service, when in fact we have little evidence to believe that the rule would have these effects.”²

To answer the question of whether the Rule should have been enacted, one needs to review the original Statement of Basis and Purpose. If this current review of the Funeral Rule is to be honest and meaningful, the FTC Staff and the current Commissioners must go back to the original Statement of Basis and Purpose and make a determination of whether the Funeral Rule has provided its predicted benefits to funeral consumers. That analysis will answer the question of whether there ever was a need for the Funeral Rule.

Price Comparison Shopping. The primary premise behind the Funeral Rule was that funeral consumers did not have access to price information, and therefore, used other reasons to select a funeral home.³ According to the Commission, once the Funeral Rule made price information available to consumers they would use it to select lower cost funeral homes. As a result, price competition would emerge and funeral prices would decrease. The Statement of Basis and Purpose acknowledged the importance of comparison shopping and the telephone price disclosure requirements in the operation of the Funeral Rule:

“The effectiveness of the rule is clearly dependent on the extent to which consumers actually use the information provided to them. This does not mean, however, that all consumers must comparison shop in order for the market to realize the benefit of price competition. Economic theory indicates that consumers who seek to use price information will benefit uninformed consumers. Thus, as long as some consumers comparison shop, the market should respond.”⁴

* * *

“The rule provision primarily designed to help consumers obtain price information for use in selecting a funeral home is the provision requiring telephone price disclosures.”⁵

Although the justification for the telephone price disclosure was originally the Commission’s belief that funeral directors refused to give price information over the telephone, it was later changed to the conclusion that funeral consumers were too uninformed to seek the price information:

“The Staff believing that shopping via telephone is the key to reforming the industry because, in Staff’s opinion, once the

² 47 Fed. 42260, 42303-04 (September 24, 1982).

³ Statement of Basis and Purpose, 47 Fed. Reg. 42260, 42270-73 (September 24, 1982).

⁴ *Id.* at 42272.

⁵ *Id.* at 42273.

discussion moves to the funeral home, it is too late for meaningful comparisons. Based largely on anecdote, Staff believes that almost all funeral directors refuse to discuss price over the phone. From this conclusion much of the rest of the rule follows.”⁶

* * *

“After the record was closed in this proceeding, data [Baseline Study] became available which suggests that only a small percentage of funeral directors refused to answer requests for price information over the telephone. The data seemed to suggest either that the findings of the study contained in the record were in error, or that funeral directors had substantially changed their practices ... Perhaps more importantly, the data confirmed the basic finding that the vast majority of consumers do not get price information over the telephone before choosing a funeral home. One of the major purposes of the Rule is to signal to those consumers who do not think to ask or were inhibited from asking, that price information is available at this critical moment of decision. That disclosure, and the requirement that price information be given, is part of the remedial scheme which the Commission has chosen to induce greater price competition and consumer choice in the marketplace.”⁷

* * *

“The Commission anticipates that these provisions will reduce economic injury through both a short-term and a long-term effect. In the short-term, the greater ease with which consumers will be able to obtain price information for purposes of comparison shopping should substantially increase the number of consumers who do so. This in turn, will create a pressure on funeral providers to price their products at competitive levels in order to continue receiving business from consumers who comparison shop. Even consumers who do not comparison shop will benefit from this overall tendency toward lower prices.”⁸

The Baseline Study referred to above was commissioned by the FTC Staff in 1981.⁹ It was a national survey of consumers who had recently arranged funerals. The purpose of the Baseline Study was to document consumer purchase experiences before the Funeral Rule so that the FTC could measure the impact of the Rule. To do that, the FTC again commissioned

⁶ Timothy J. Muris, Memorandum to the Commission, RE: Proposed Trade Regulation Rule Regarding Funeral Industry Practice, p. 36 (July 16, 1982).

⁷ Statement of Basis and Purpose, 47 Fed. Reg. 42260, 42268-69.

⁸ *Id.*

⁹ April, 1988 Staff Report to the Federal Trade Commission, p. 14.

a very similar funeral consumer survey known as the Replication Study in 1987. By comparing the 1981 Baseline Study with the 1987 Replication Study, the FTC had the empirical evidence it needed to measure the impact of the Rule on funeral consumers and the funeral market.¹⁰

One of the most telling statistics from the FTC Staff analysis of the Baseline Study and the Replication Study concerned the level of consumers' comparison shopping before and after the Funeral Rule took effect. As reported by the FTC economist Dr. Timothy Daniel, the 1981 Baseline Study showed that 7.2% of funeral consumers contacted more than one funeral facility before selecting one. In 1987, three years after the Funeral Rule took effect, the number of consumers who contacted more than one funeral home before selecting one fell to 4.2%.¹¹ This led Dr. Daniel to conclude that "shopping occurs infrequently in this market, and that the promulgation of the rule had no marked impact on shopping behavior."¹²

One important fact that was noted in the Replication Study concerned the marked difference in the level of price comparison shopping between consumers selecting burial and those selecting cremation. The FTC Staff noted that of the consumers who contacted more than one funeral home prior to selecting one, 42.9% of them purchased cremation.¹³ However, of the funeral consumers in the Replication Study, only 14% of them purchased cremations.¹⁴ Therefore, cremation customers were three times more inclined to price shop than consumers selecting burials.

The same shopping behavior between burial consumers and cremation consumers was reported in the Baseline Study. When the funeral consumers in 1981 were asked to identify the most important factor in selecting a funeral home, 9% of cremation customers identified "cost of funeral arrangements" while only 2% of burial consumers found cost to be the most important factor.¹⁵ Clearly, cremation consumers are more price-conscious and more inclined to price shop funeral homes.

With cremation levels going from 15% in 1985 to 56% in 2020¹⁶, one would expect to see a sizeable increase in the number of consumers price shopping by contacting more than one funeral home. This nearly fourfold increase in cremation, plus the prediction from the Commission that the Funeral Rule would significantly increase the level of shoppers, should had dramatically increased price comparison shopping among funeral consumers.

¹⁰ The FTC Staff described the Replication Study as the "most comprehensive study available on the characteristics of the funeral market under the Funeral Rule." April, 1988 Staff Report to the Federal Trade Commission, p. 33.

¹¹ Daniel, Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services, p. vi (April, 1988).

¹² *Id.* at 15.

¹³ April, 1988 Staff Report to the Federal Trade Commission, p. 39, n. 79.

¹⁴ Replication Study, p. III-39, Table III - 28 (April 28, 1988).

¹⁵ Baseline Study, Tables 21 and 22 (July, 1982).

¹⁶ See NFDA response to Question 16 below.

However, while price comparison shopping has increased in the funeral market, the increase has been fairly marginal, especially given that over 56% of consumers are now selecting cremation. In 1981, the Baseline Study showed that 7.2% of consumers contacted more than one funeral home before selecting one. NFDA compared this result to the last nine years of its funeral consumer survey results taken from its annual Consumer Awareness and Perception Studies (“NFDA Funeral Consumer Surveys”).¹⁷

When consumers in the NFDA Funeral Consumer Surveys from 2012 to 2020 were asked how many funeral homes they contacted or visited, 17% replied they contacted or visited more than one funeral home. While this might seem to suggest that price shopping has increased, it is notable that of the 17% who contacted more than one funeral home, only 56.2% of them did so in order to obtain price information. So, taken as a whole, 36 years after the Funeral Rule took effect and with over half of funeral consumers now opting for cremation, only 9.6% of consumers are contacting or visiting more than one funeral home in order to get price information before selecting a funeral home.

Selection of Funeral Home. Even more significant than the low percentage of funeral consumers who price shop is the survey evidence of why funeral consumers select funeral homes that they do. This one element of funeral consumer behavior has remained a constant since before the Rule took effect. And, this fact, more than any other, has undermined the FTC’s 36 year attempt to persuade funeral consumers to use price as the primary factor in selecting a funeral home.

Below are survey results from the 1981 Baseline Study, the 1987 Replication Study, NFDA’s Funeral Consumer Surveys from 2012 – 2020, and NFDA’s Family Satisfaction Surveys from 2016 – 2019.¹⁸ Each of these surveys ask funeral consumers to identify either the most important reason for selecting the funeral home that they did or to list the various reasons that were important to them in the selection of the funeral home they chose. The results are as follows:

¹⁷ Since 2012, NFDA has conducted an annual survey of consumers to measure their attitudes toward funeral and funeral services in order to help members improve the quality of services provided. While the questions in the annual NFDA Consumer Survey occasionally have been modified during the nine years it has been conducted, whenever possible, results are compared to previous years’ surveys to determine trends. The consumer survey in 2020 was conducted March 5 to March 11, 2020. Using Survey Monkey, surveys were e-mailed to an online consumer panel consisting of Americans age 40 and older and a total of 865 surveys were completed. Certain ethnic groups were targeted separately in order to get a better representation of different race/ethnic groups. The effort yielded 511 surveys. Results for all respondents were projectable with a range of $\pm 3.3\%$ (with 95% confidence). It should be noted that consumers who participate in online panels are typically high internet users, have higher incomes, and higher education levels.

¹⁸ Please see NFDA’s response to Question 6 below for a description of the NFDA Family Satisfaction Surveys.

1981 FTC BASELINE STUDY¹⁹
LISTING OF MOST IMPORTANT REASON FOR
SELECTING A FUNERAL HOME

<u>Reason</u>	<u>Percentage</u>
1. Knowing Funeral Director	38%
2. Previous Experience with Funeral Home	30%
3. Location of Funeral Home	18%
4. Funeral Home Specializes in Serving Faith/Ethnic	4%
5. Opinion of Relatives or Friends	3%
6. Cost of Funeral Arrangements	3%
7. Deceased's Request	2%
8. Had No Choice	1%
9. Recommendation of Clergy	1%

1987 FTC REPLICATION STUDY²⁰
PERCENTAGE OF FUNERAL CONSUMERS LISTING MOST IMPORTANT
REASON FOR SELECTING A FUNERAL HOME

<u>Reason</u>	<u>Percentage</u>
1. Personal Experience with Funeral Home	32%
2. Knowing Funeral Director or Reputation	30%
3. Location of Funeral Home	19%
4. Other Reason	7%
5. Opinion of Relatives or Friends	4%
6. Funeral Home Specializes in Serving Faith/Ethnic	3%
7. Cost of Funeral Arrangements	3%
8. Recommendation of Clergy	1%
9. Seeing or Hearing Advertisement	1%

¹⁹ July, 1981 Baseline Study, FTC Bureau of Consumer Protection, Table 20, p. 51. It is interesting to note that when the same question is asked only of those consumers who selected cremation, the location of the funeral home is cited as the top most important reason for selecting the funeral home (28%) while previous experience (21%) and knowing the funeral director (26%) both are far less important to the cremation consumer. Not surprisingly, 9% of cremation consumers cite price as the most important factors while only 2% of burial consumers did (*Id.* at pages 52-53).

²⁰ April 28, 1988 Report on the Survey of Recent Funeral Arrangers Prepared for the FTC, Table III - 28, p. III-39.

NFDA CONSUMER AWARENESS AND PREFERENCE SURVEYS
MOST IMPORTANT REASONS CITED BY FUNERAL CONSUMERS FOR
SELECTING THE FUNERAL HOME THEY SELECTED
COMPOSITE RESULTS FROM 2012-2020 SURVEYS

<u>Reasons</u> *	<u>Percentage Cited</u>
1. Previous Experience with Funeral Home	34.5%
2. Location of Funeral Home.....	26.9%
3. Existing Relationship/Know Funeral Director	24.9%
4. Good Reputation/Reputable	24.4% **
5. Convenience	23.0%
6. Affordable Price	17.2%
7. Prearranged with the Funeral Home.....	16.6%
8. Good Customer Service.....	14.8% **
9. Availability	12.2%

* Since consumers could cite more than one reason, the aggregate percentage exceeds 100%

** This category was not listed in the 2013 Survey

NFDA FAMILY SATISFACTION SURVEYS
PERCENTAGE OF CONSUMERS WHO CITED A PARTICULAR
REASON FOR SELECTING THE FUNERAL HOME

<u>Reasons</u> *	<u>Percentage Cited</u>
1. Previously Served My Family.....	57.4%
2. Reputation of Funeral Home.....	38.9%
3. Location of Funeral Home	29.7%
4. Previously Attended Non-Family Funeral at Funeral Home	27.9%
5. Personal Recommendations by Others	20.3%
6. Funeral Home Facilities	18.0%
7. Prepaid Funeral with this Funeral Home	16.1%
8. Pre-Arranged Funeral with this Funeral Home.....	15.4%
9. Cost of Funeral	4.8%
10. Advertising by Funeral Home.....	2.2%

* Since consumers could cite more than one reason, the aggregate percentage exceeds 100%.

Even though the time span between the respective sets of surveys is 30 to 40 years, what is remarkable is that, for the most part, funeral consumers still select funeral homes based upon prior experience with the funeral home, location of the funeral home, existing relationship with a funeral director, and reputation. Despite the FTC's efforts to promote price as the decisive factor for the selection of the funeral home, funeral consumers continue to use the factors noted in the surveys to make that decision.

The FTC has acknowledged this fact of consumer behavior in the education pieces it publishes to persuade funeral consumers to use price in selecting a funeral home. In a consumer information piece entitled "Choosing a Funeral Provider", which is found at www.consumer.ftc.gov, the FTC advises consumers as follows:

"People often select a funeral home or cemetery because it's close to home, has served the family in the past, or has been recommended by someone they trust. But limiting the search to just one funeral home may risk paying more than necessary for the funeral or narrowing their choice of goods and services."²¹

This short paragraph is the recognition by the FTC that the Rule has not changed consumer behavior in the selection of the funeral home.

Although "price" never got above sixth place in the survey results reported above, it can be an important factor in some markets. In areas with high transient populations who may have little family connections in the area and who tend to be less affiliated with a formal religion, price can rise to become the predominate factor for a consumer's selection of a funeral home. This is why there are areas of the country with high levels of funeral price competition like southern Florida and California. In those markets, many consumers use price to select a funeral home and funeral homes respond by discounting prices, advertising prices, and posting GPL's online. But, for most consumers and for most funeral markets, price is not the most important factor in the selection of funeral homes.

This fact goes to the very heart of why the Funeral Rule has not provided the consumer benefits the Commission predicted back in 1982. The Funeral Rule was based on the premise that funeral homes did not provide consumers with access to price information, and therefore, consumers used other reasons to select a funeral home. The Commission predicted that if the Rule required price information to be given to consumers by written and itemized price lists and price disclosures over the telephone, consumers would switch to selecting a funeral home on the basis of price rather than these other factors. However, despite 36 years of consumers being provided access to price information, they have not fundamentally altered their priorities when selecting a funeral home.

²¹ J. Howard Beales, former director of the FTC Bureau of Consumer Protection, in his May 30, 2003 publication entitled "The FTC's Use of Unfairness Authority: It's Rise, Fall, and Resurrection", argued that the Commission needs to respect consumer choice, even if it believes it to be unwise. "Unwise consumer choices are a strong argument for consumer education, but not for law enforcement." p. 6.

The reasons why consumers use the factors they do in selecting a funeral home was explained very clearly back in 1982 by then Director of the FTC Bureau of Economics, Robert Tollison:

“I would like to suggest an alternative view of how consumers choose funeral services that comports with a number of observed characteristics of the funeral industry, including some of the symptoms described above. If this alternative explanation is correct, promulgation of the Rule would impose costs on the industry (and ultimately on consumers) with little accompanying benefit.

Consider the following view of how consumers purchase funeral services. Suppose that the planning and purchase of funeral services frequently involve more than one person. These decision makers use past personal experience, reputation of the firm, recommendations of family and friends, and proximity to the funeral home in choosing services. **To consumers, quality of service is the overriding concern in their purchase decision.** Consumers would be expected to run few risks in selecting a home, since the ramifications of a poor choice would prove so great.”²²

What Robert Tollison observed in 1982 still holds true today, as the above consumer survey evidence aptly demonstrates. The selection of a funeral home for most consumers is not a price driven decision. And, as NFDA explains in its response to Question 13 below, requiring funeral homes to place more price information on their websites is not going to change the reasons why consumers select the funeral homes they do.

Price. The measure by which to determine whether the 36 year Funeral Rule has worked is, as the FTC proclaimed in the original Statement of Basis and Purpose, price. Throughout the original Statement of Basis and Purpose that explained the rationale and justification for the Funeral Rule, the Commission predicted that the Rule would lower funeral prices.²³

Price data demonstrates that the Funeral Rule did not decrease funeral prices either in the short run or the long run. When the Replication Study was conducted three years after the Rule took effect, FTC economist Dr. Timothy Daniel analyzed the data from that survey and compared it to the 1981 Baseline Study. He concluded that even after controlling for inflation and a number of other factors that could influence funeral expenditures, funeral consumers in 1987 spent 9.1% more than funeral consumers did in 1981.²⁴ This increase, which he found

²² Robert Tollison, Memorandum to Commission, RE: Funeral Industry Trade Rule, pp. 1-2 (July 20, 1982) (emphasis supplied).

²³ 47 Fed. Reg. 42260, 42268-69, 42272, 42292-93 (September 24, 1982)

²⁴ Daniel, Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services, p. iv-v (April, 1988).

statistically significant, led him to conclude that the Rule did not contribute to a reduction in funeral expenditures.²⁵

While the FTC acknowledged that the Rule did not deliver any economic benefits to consumers, it cautioned that the allegedly low funeral home compliance with the requirements of the Rule and the fact that consumers rarely make funeral arrangements may account for the Rule taking longer to produce benefits.²⁶ So, the Rule was retained in 1994. Since that first review from 1989-1994, the FTC has never done another analysis of whether the Rule has provided its promise of lower funeral prices.

Since the Rule has now been in effect for 36 years, it is safe to assume that it has had sufficient time to deliver its promise of economic benefits. But, by any measure, that predicted decrease in funeral prices never materialized.

The U.S. Bureau of Labor Statistics published a study in 2017 entitled “The Rising Costs of Dying, 1986-2017”. That report found that in the 30 years since the Consumer Price Index for All Urban Consumers (“CPI-U”) began tracking funeral expenses in December, 1986, the price of funerals increased nearly double the CPI-U.²⁷ Therefore, not only did the Funeral Rule not lower prices, it appears it had no effect whatsoever in even holding down price increases over the past 30 years.

NFDA’s own price data is very consistent with the findings of the U.S. Bureau of Labor Statistics. Over the years, NFDA has conducted its Member General Price List Studies in which it surveys its membership for historical funeral price information. One metric it reports on is the cost of the adult funeral consisting of the basic service fee, transfer of remains, embalming, other preparation of the body, viewing, funeral ceremony, hearse, service van, memorial printed package and an 18-gauge steel casket.

In 1984, the year the Funeral Rule took effect, the median cost of the adult funeral was \$1,207. In 2019, the median price for that funeral had increased to \$7,640. Had the \$1,207 price of the adult funeral increased by only the CPI-U since 1984, it would equate to a price of \$3,006 in 2019. Given that the median price of the adult funeral is more than double the corresponding increase in the CPI-U, it is clear that the Funeral Rule has not provided its predicted benefit of lowering funeral prices.

In doing this price analysis, NFDA also reached out to Nixon Consulting, Inc., a well-known financial advisory firm for funeral homes. Nixon Consulting, Inc. has tracked funeral prices and reported them out on a periodic basis for over 25 years. Nixon Consulting, Inc. reported that the average price for the combined funeral home services went from \$2,251 in

²⁵ *Id.*

²⁶ See, for example, Memorandum of Peter Vander Nat, p. 14 (August 26, 1991).

²⁷ During that 30 year time span, the CPI-U had a cumulative percentage change of 123.4 while funeral prices increased at 227.1. The CPI-U is the standard most economists use to measure inflation in the U.S.

1994 to \$5,823 in 2018. Had funeral service prices only increased by the CPI-U during that same time period, the price for funeral service would have only increased to \$3,850. The price data from Nixon Consulting, NFDA and the Bureau of Labor Statistics all demonstrate that funeral prices have far outstripped inflation since the Funeral Rule took effect.

The absolute failure of the Funeral Rule to hold down increases in funeral prices, much less deliver its promise reduction in funeral prices, completely undercuts the FTC's rationale for the Funeral Rule. As the FTC correctly pointed out in the original Statement of Basis and Purpose, "the effectiveness of the Rule is clearly dependent on the extent to which consumers actually use the information provided to them."²⁸

Thirty-six years later, we now know what Robert Tollison knew back in 1982 - - most funeral consumers do not use price when selecting a funeral home. It is this fact, more than any other, that undermined the consumer's rationale and justification for the Funeral Rule. At the end of the day, there was never a need for a Funeral Rule.

²⁸ 47 Fed. Reg. 42260, 42272 (September 24, 1982)

2. *Benefits and Costs to Consumers:* What benefits has the Rule provided to consumers? Does the Rule impose any significant costs on consumers? Please quantify these benefits and costs wherever possible.

The Funeral Rule did not deliver the benefits to consumers that the FTC promised back in the 1982 Statement of Basis and Purpose. But the Funeral Rule does provide a set of basic protections to consumers that include the following:

- A legally enforceable right to receive price information over the telephone from a funeral provider.
- A legally enforceable right to receive written price lists upon request or before selecting any funeral good or service.
- A legally enforceable right to be provided an itemized price list containing a minimum of 16 goods and services specified by the FTC.
- A legally enforceable right to receive a price list containing mandatory disclosures that provide information to consumers regarding the legal and practical requirements of certain funeral goods and services they may wish to purchase or decline to purchase.
- A legally enforceable right to receive a written itemized statement of the funeral goods and services the consumer purchased at the end of the arrangements.
- A legally enforceable right to be protected against misrepresentations that may mislead the consumer into purchasing unnecessary funeral goods and services.
- A legally enforceable right that protects the consumer against being compelled to purchase any unwanted funeral goods or services.
- A legally enforceable right to bring in third-party merchandise and have the funeral provider service that merchandise.

As discussed in greater detail in response to Question 11 below, most, if not all states, probably would have enacted some type of funeral price disclosure law or regulation along the lines of the Funeral Rule had the FTC not preempted the price regulation field back in 1982.²⁹ This would have been a preferable outcome since states are better able to fashion laws and regulations to meet the demands of the particular funeral markets in their states. Additionally,

²⁹ In that regard, it is noteworthy that back in 1982, less than half of the states had any type of law regulating prepaid funerals. Since that time, every state has adopted laws overseeing the funding of prepaid funerals. It is a similar situation with cremation laws and regulations. As the level of cremation has increased, most states have enacted laws regulating crematory practices and licensing crematories. States would have enacted funeral price disclosure laws and regulations had the federal government not asserted its authority over an industry traditionally governed by state law.

it would have placed all regulation of death care providers under one umbrella instead of having the split federal/state regulation that now exists.³⁰

Even if the Funeral Rule had never been promulgated, funeral homes would be providing written price lists to consumers when arranging funerals.³¹ A funeral home, like any business, wants to sell goods and services to the consumer. It cannot do that unless the consumer is aware of what is for sale and at what price. Since funeral homes offer multiple goods and services for sale, the only practical way to sell is through written price lists.

Many items that funeral homes sell are not required by the Funeral Rule to be on a written price list, but are nonetheless placed on the price list by the funeral home.³² For example, with 1.5 million cremations occurring every year in the U.S., funeral homes are selling more than a million urns annually. Yet, there is no requirement in the Funeral Rule that urns be listed on a price list. Nevertheless, funeral homes list urns and urn prices so consumers will purchase urns from them. There is no need to require these listings by law since the market requires it.³³

Had the Funeral Rule never been promulgated, funeral homes would still be providing written price lists to consumers arranging funerals. Therefore, the Rule is not needed since the overwhelming majority of funeral homes would be providing price lists even in the absence of the Rule. The value of the Funeral Rule, however, is that it provides all funeral consumers with legally enforceable rights and safeguards that must be adhered to and complied with by all funeral providers. This provides every funeral consumer who deals with a funeral provider the legal entitlement to the price information.

³⁰ The FTC acknowledged in the original Statement of Basis and Purpose that price disclosure regulation by the states would have "significant benefits over regulation at the federal level." 47 Fed. Reg. 42260, 42289 (September 24, 1982).

³¹ In fact, funeral homes were already doing that before the Funeral Rule took effect. The Baseline Study, which was a survey of funeral consumers taken in 1981 but which the FTC did not include as part of the original rulemaking, reported that three years before the Rule became effective, the overwhelming majority of consumers recalled being shown a written price list (83.2%), a casket price list (88.2%), and an outer burial container price list (72%) as part of funeral arrangements. Baseline Study, questions 27-30, July, 1982.

³² See response to Question 9 where NFDA identifies over 30 items customarily offered for sale by funeral homes and listed on general price lists, none of which are covered by the Funeral Rule.

³³ It is interesting to note that with millions of urns being sold on a year-to-year basis, the FTC has never reported any consumer complaints regarding funeral homes failing to list urns or urn prices.

3. *Benefits and Costs to Industry Members: What benefits has the Rule provided to businesses? Does the Rule impose any significant costs, including costs of compliance, on businesses, including small businesses? Please quantify these benefits and costs wherever possible.*

A. Benefits to Funeral Providers. As NFDA has reported in past comments to the FTC on the impact of the Funeral Rule, the itemization required by the Funeral Rule when it was promulgated in 1982 made many funeral homes closely examine their costs, prices and profits. That analysis led many of them to increase prices to recover costs and collect a fair profit. Indeed, the Commission's own economist, Dr. Timothy Daniel, when comparing the 1981 Baseline Study with the 1987 Replication Study, reported that, even after controlling for inflation, funeral consumers spent 9.1% more on funerals three years after the Rule took effect than they did three years before the Rule took effect.³⁴

By requiring funeral homes to break out and price the many components of a funeral service, the Rule made these small businesses do a long overdue cost recovery analysis. Besides leading to an unprecedented 9.1% increase in funeral home expenditures, it also resulted in these funeral homes becoming better businesses by focusing on individual cost centers and pricing. This was an unexpected benefit of the Funeral Rule for funeral homes.

B. Compliance Costs of Distributing the General Price List. For over thirty years, NFDA has beseeched the FTC to repair the vague and overly broad price distribution requirements for the general price list. No Funeral Rule issue has been more troublesome for the funeral profession or more problematic for FTC enforcement than the trigger for giving out the GPL to consumers. Section 453.2(b)(4)(i)(A) of the Funeral Rule requires a funeral provider to give out a GPL to a person who inquires in person about funeral goods, funeral services, funeral arrangements, or funeral prices offered by the funeral provider. The GPL must be given "upon beginning discussion" of any of those items.

As NFDA has pointed out since the Funeral Rule was first reviewed back in 1988, Section 453.2(b)(4)(i)(A) is ambiguous and vague. Read literally, it would require funeral providers to give out a GPL to anyone who casually mentions a funeral arrangement or a funeral service. Although the FTC Staff has informally assured funeral providers that despite the imprecise wording, it will only enforce those GPL distribution requirements in a consumer setting, that does not ameliorate the fact that the trigger is impermissibly vague and overbroad.

³⁴ Timothy P. Daniel, *An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services*, April, 1988, pp. iv-v.

During the first review of the Funeral Rule from 1988 through 1994, the FTC Staff, when confronted with NFDA's complaints about the vague and imprecise GPL distribution trigger, opined that the funeral profession had misinterpreted the GPL distribution requirements. To clear up the confusion as to when a GPL had to be distributed, the FTC Staff proposed a revision to Section 453.2(b)(4)(i) that "would clarify the GPL 'timing' requirement by breaking down the term 'funeral arrangements' into component parts, namely discussions of 'prices' or of the 'selection' of funeral goods or services, including selection of the overall type of funeral service or disposition."³⁵

In that regard, the FTC Staff recommended that the subsection be reworded as follows:

"(i) Give a printed or typewritten price for retention to persons who inquire in person about the prices or the selection of funeral goods or services. The funeral provider must offer the list upon beginning discussions either of prices or of the selection of any funeral goods or funeral services, including the overall type of funeral service or disposition, whichever discussion occurs first."³⁶

Although this proposal still retained the ambiguous term "discussions", it made clear that GPL distribution was triggered by price inquiries or selection. In that respect, it would have helped to bring some objectivity to the determination of when to distribute the GPL. But, unfortunately, the FTC Staff proposal was inexplicably withdrawn by the Staff before the Commission approved the amended Funeral Rule in 1994.

So the compliance problem of tying GPL distribution to a "discussion" of funeral goods, services, arrangements or prices remains. This ambiguity presents untold number of scenarios where funeral goods, services, arrangements or prices may be discussed, but where the consumer has no interest in either funeral prices or the selection of funeral goods or services. For example, in each of the dozen scenarios below, there is a discussion of funeral goods, services, arrangements or prices. However, if one were to ask FTC Staff members or funeral directors to identify which of those scenarios requires a GPL to be distributed under the Funeral Rule, there would be no consensus on when the GPL must be distributed:

- A funeral director attends a school picnic and her friend asks how many people attended a large funeral that she supervised the day before. The friend and the funeral director discuss the logistics of carrying out a large funeral.
- A widow arranges the funeral service of her deceased husband who was a Vietnam veteran. The son later visits the funeral home and asks the funeral director to arrange an honor guard during the graveside committal.

³⁵ Final Staff Report to the Federal Trade Commission and Proposed Amended Rule, p. 163 (June, 1990).

³⁶ *Id.*

- A funeral director is called to a neighbor's home to do a removal of an elderly man who died suddenly. As the funeral director leaves with the remains, an adult grandson mentions to the funeral director that he heard his funeral home was expensive and that the family may want to choose a less expensive funeral home.
- A woman comes to the funeral home, informs the funeral director she wants to select a funeral home for her own funeral, and asks for a tour of the funeral home facility.
- A woman comes to the funeral home, informs the funeral director that her mother had just died that morning, indicates she wants only a small family-only funeral, and asks for a tour of the funeral home facility.
- A widower is going on Medicaid. He comes to the funeral home to assign the ownership of an insurance policy to the funeral home in payment for his future funeral in order to qualify for Medicaid. He informs the funeral director he does not want to arrange the funeral now, but only wants to assign the insurance policy.
- A funeral director is doing a removal from a nursing home and encounters the family. They indicate that they need to do the visitation and funeral ceremony in two days because all of the family members are now in town. The funeral director checks the funeral home's schedule on his smartphone and he informs the family that the funeral can be held in two days.
- A funeral director is doing a removal at a nursing home and encounters the family. They inform him that family members are overseas and cannot return for two weeks. They ask if the funeral home can hold the body so they can have a funeral and visitation in two weeks. The funeral director explains that if the body is embalmed it would not be a problem.
- A couple comes to the door of the funeral home, asks to see a funeral director, and when meeting with her, asks whether the funeral home performs green burials. The funeral director informs the couple that the funeral home does not offer green burials.
- A couple comes to the door of the funeral home, asks to see a funeral director, and when meeting with her, asks whether the funeral home does green burials. The funeral director informs the couple that the funeral home just did a green burial last week which she describes in detail.
- Several months after her mother's death, a daughter brings the cremated remains of her mother to a funeral home and wants to buy an urn. She purchases an urn and asks the funeral home to place the mother's cremated remains in the urn.

In each of the above dozen scenarios, there is a discussion of funeral goods, services, prices, or arrangements. According to the literal wording of the Funeral Rule, a GPL should

have been given out in each of the 12 scenarios. Yet, the FTC Staff would not require that distribution because, as indicated above, in some of these scenarios there were no discussions of price nor selection of funeral goods, services or arrangements. However, under the current wording of the Funeral Rule, there would be no consensus among practitioners or regulators on which scenarios required the distribution of a GPL.

Using a “discussion” as the triggering event for the distribution of a GPL is fundamentally flawed because it can arise in so many contexts where there is no intention to purchase goods or services.³⁷ The solution is to tighten up the distribution requirements so that consumers are receiving price information when they want it and before making selections. Likewise, funeral directors and regulators can examine the wording of the Funeral Rule and determine with precision when the GPL would have to be distributed.

In Exhibit A, NFDA has proposed a series of revisions to the GPL distribution requirements that are directly tied to price and selection. Under that proposed model, a GPL would have to be distributed when any of the following three events occur:

1. Request for Price Information. If any person requests price information from the funeral provider, the funeral provider must distribute a GPL. Moreover, unlike the current Funeral Rule, this requirement is not confined to in-person requests. Because a GPL can easily be distributed by e-mail, fax or by posting on a funeral home website, the Funeral Rule should be updated to provide for a GPL to be transmitted to the consumer who wants price information using any of these means to transmit the GPL. This would be a significant expansion of the current GPL distribution requirements in the Rule.

2. In-Person Price Inquires. In the case where a consumer meets with a funeral director and inquires about price information, the consumer would be handed a typewritten or printed GPL that they can take with them for retention. This is the same provision as found in the current Funeral Rule.

3. Selection of Funeral Goods or Services. Before a consumer makes an in-person selection of a funeral good or service, they would have to be given a GPL. Moreover, if the funeral home sold funeral goods or services online, it would be required to post a link to its GPL on its website. Again, this is a significant expansion of the GPL distribution requirements since currently the GPL needs to be provided only for in-person selections.

The three-tiered GPL price distribution requirement proposed by NFDA insures that any consumer who wants price information will be provided it by the funeral provider and that consumers will be given the GPL prior to selection of any funeral goods or services.

³⁷ The FTC Staff recognized this fact in the 1985 Staff Compliance Guidelines (50 Fed. Reg. 28062, 28069-70, July 9, 1985). It stated that a GPL would not have to be distributed to a student taking a tour of a funeral home who asks how much embalming costs. Even though this constitutes a discussion of a funeral service and its price, and would clearly require a GPL to be distributed in accordance with the wording of the Funeral Rule, the FTC Staff stated they would not require it.

Those modifications tie the GPL distribution to price and selection while updating the Funeral Rule to take advantages of e-mail, fax and internet posting. They also clean up the substantial ambiguity and vagueness that plagues the current GPL distribution requirements which are tied to “discussions.” This is important both in terms of GPL access, updating the Funeral Rule, and resolving the most troublesome enforcement issue in the 36 year history of the Funeral Rule.

C. Compliance Burden of Distributing Casket Price Lists and Outer Burial Container Price Lists. In the preceding section, NFDA explained that the use of the ambiguous and overbroad term of “discussion” required the FTC Staff to explain in several advisories and guidelines that the GPL distribution was triggered by price and selection.³⁸ However, as the U.S. Supreme Court noted, when agencies promulgate vague and open-ended regulations that they can later interpret as they see fit, it frustrates the notice and predictability purpose of rulemaking.³⁹

The casket price list distribution requirements of the Funeral Rule⁴⁰ are a perfect example of the judicial concern expressed by the Supreme Court in *Christopher v. SmithKline Beecham Corp.* Section 453.2(b)(2)(i) governs the distribution of the casket price list. It provides in relevant part as follows:

“(i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets.”

Five years ago, for the first time in the 36 year history of the Rule, the FTC Staff held that before a family member may enter a room that contains a casket, they must be provided a casket price list.⁴¹ By focusing on the last eight words of the above-quoted section, the FTC Staff found that a funeral provider violates the Funeral Rule if a family member is shown into a funeral home arrangement office containing any display (computer or otherwise) of a casket or alternative container without first being provided the casket price list.

NFDA sent several letters disagreeing with this new position and pointing out that a casket price list must only be given out to a person who inquired in person about the offering

³⁸ Final Staff Report to the Federal Trade Commission and Amended Proposed Rule, pp. 161-64 (June, 1990); FTC Staff Compliance Guidelines, 50 Fed. Reg. 28062, 28069-70 (Illustration #3), 28071 (Illustration #17) (July 9, 1985).

³⁹ *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142,158 (2012).

⁴⁰ All of the discussion regarding the casket price list distribution requirements herein also applies equally to the distribution requirements for outer burial containers.

⁴¹ FTC Staff Advisory Opinion #15-1 (June 29, 2015). See also FTC Staff Advisory Opinion #16-1 (June 16, 2016).

or prices of casket and alternative containers. As a matter of basic statutory construction, the two sentences in Section 453.2(b)(2)(i) must be read as a whole and not in isolation.⁴²

The second sentence of Section 453.2(b)(2)(i) requires a casket price list to be given out upon beginning discussions, but in any event, before showing caskets. But to whom is the casket price list to be given out to? The answer is found in the first section: to those “people who inquire in person about the offerings or the prices of caskets or alternative containers.” Unless the two sentences are read in conjunction with each other, a funeral provider would be in violation every time a person sees a casket without first being given a casket price list. Indeed, if the second sentence is read in isolation, a funeral home running an advertisement on a billboard or in a newspaper that displayed a casket would be in violation of the Rule since it is showing a casket without first distributing a casket price list.

To clarify this inherent ambiguity, NFDA is proposing in Exhibit A to modify Sections 453.2(b)(2)(i) and (3)(i) to require a CPL or OBCPL to be given upon any in-person price inquiry or before a consumer selects a casket, alternative container or outer burial container. This would replace the ambiguous distribution requirements with mandates that are clear-cut and easy to understand and enforce. More importantly, it would ensure that consumers obtain casket price lists and outer burial container price lists when they inquire about price and before they make any selection of those products.

⁴² See *Reading Law: The Interpretation of Legal Texts*, Antonin Scalia & Bryan A. Garner, p. 167 (2012).

4. *Impact on Information:* What impact has the Rule had on the flow of truthful information to consumers and on the flow of misleading information to consumers?

The Funeral Rule requires funeral providers to print on the general price list several mandatory disclosures that inform consumers that items may be purchased on an itemized basis, that the basic service fee is non-declinable, that embalming is not required by law except in certain special cases, and that alternative containers may be used for direct cremation. In addition, a mandatory disclosure on the outer burial container price list explains that the law does not require the use of an outer burial container in most cases, although a cemetery may require it. The Statement of Funeral Goods and Services Selected again explains that embalming is not required for direct disposition and that the funeral provider will list on the Statement the reason for embalming as well as any legal, cemetery or crematory requirements that compel the purchase of an item. The funeral provider also will disclose on the Statement which cash advance item, if any, have been marked up.

As discussed in response to Question 20 below, NFDA believes that the mandatory disclosures for the basic service fee, the legal requirements of embalming, and the legal requirements for the outer burial container should be revised to provide more accurate information to consumers. For example, the mandatory disclosure on embalming suggests that embalming is rarely required by law even though 37 states have laws requiring embalming or refrigeration within a certain time period after death. The revised disclosures that NFDA proposes in its response to Question 20 and as set forth in Exhibit A will provide consumers with more accurate information than they are now receiving.

On the issue of whether the Funeral Rule has been helpful to prevent the flow of misleading information to consumers, it must be remembered that the FTC's findings in the original Statement of Basis and Purpose that funeral providers mislead consumers were based largely on anecdotal evidence. In his 1982 critique of FTC rulemaking procedures under the Magnuson-Moss Act of 1975, Timothy J. Muris, then the Director of the FTC Bureau of Consumer Protection and later Chairman of the FTC, singled out the Funeral Rule rulemaking for its heavy reliance on anecdotal evidence:

“Yet the commission has been quite willing to rely on largely anecdotal evidence for its past rulemaking decisions. The recently adopted funeral rule, for example, included prohibitions on various alleged misrepresentations by funeral directors that were, in most cases, supported by no more than a score of anecdotes, a finding

hardly significant in an industry with nearly 2 million transactions a year.”⁴³

After the original Funeral Rule rulemaking record was closed, the FTC commissioned the 1981 Baseline Study, which was the first statistically valid survey to examine what were the actual purchase experiences of funeral consumers before the Rule took effect. What the 1981 Baseline Study showed was that, contrary to the FTC’s claim in the Statement of Basis and Purpose that funeral directors compelled direct cremation customers to purchase caskets⁴⁴, the actual number of cremation customers who purchased caskets was consistent with the number of consumers who purchased open casket and closed casket funeral services followed by cremation.⁴⁵ In other words, there was zero survey evidence showing that direct cremation customers were compelled to purchase caskets.

Similar results refuting findings made in the 1982 Statement of Basis and Purpose were also shown by the Replication Study that the FTC commissioned in 1987 to see what effect the Rule had in the years it had been in effect. Again, the Replication Study was a statistically valid survey of funeral consumers and their actual purchases. On the issue on whether funeral directors misrepresented the legal or practical requirements of embalming prior to the Funeral Rule taking effect, the FTC found in the original Statement of Basis and Purpose that such conduct was widespread and that new Funeral Rule-required price list disclosures on the legal requirements of embalming would lead to lower levels of embalming purchases after the Rule takes effect.⁴⁶

Contrary to the FTC’s prediction in the Statement of Basis and Purpose, the Replication Study showed that three years after the Rule took effect, the percentage of burial consumers who purchased embalming actually increased over the level of burial consumers purchasing embalming before the Rule.⁴⁷ According to FTC economist Dr. Timothy Daniel, the survey results from the Replication Study contained no evidence to suggest that the Funeral Rule had influenced the proportion of consumers who purchased embalming.⁴⁸ Since the embalming rate for consumers selecting burial actually increased rather than decreased after the Rule took

⁴³ *Rules Without Reason, The Case of the FTC*, Timothy J. Muris, AEI Journal of Government and Society, September/October, 1982, p. 22.

⁴⁴ 47 Fed. Reg. at 42276, 42294, n. 354 (September 24, 1982). Although the FTC conceded that funeral directors misrepresenting that caskets were required for direct cremation were “not typical”, it predicted that outlawing this misrepresentation would save up to \$10,000,000 a year for consumers.

⁴⁵ The 1981 Baseline Study showed that there were 130 cremation customers in the survey. Of those 130 cremations, 48 were cremations preceded by an open or closed casket ceremony. The Baseline Study further found that of the 130 cremation customers, only 44 of them purchased caskets. Since 48 cremation customers had open or closed casket ceremonies, it is not surprising that at least 44 caskets were purchased. Therefore, it is apparent that none of the consumers who purchased direct cremation were compelled to purchase a casket. See Bureau of Economic Staff Report, 10, Table IV and July, 1982 Final Report of the Office of Impact Evaluation, Bureau of Consumer Protection, p. 23.

⁴⁶ 47 Fed. Reg. at 42276 and 42294 (September 28, 1982).

⁴⁷ April, 1988 Report of Dr. Timothy Daniel, FTC Director of Consumer Protection at p. 8, Table IV.

⁴⁸ *Id.*

effect, it is clear that funeral directors were not misrepresenting the legal requirements of embalming prior to the Funeral Rule.

Despite the lack of empirical evidence justifying the mandatory disclosures, funeral homes do not object to having the mandatory disclosures on price lists because these disclosures provide relevant information to consumers. Moreover, they serve as a safe harbor provision for both consumers and funeral homes by demonstrating that the consumer has been provided the information relevant to his or her purchase. NFDA does, however, recommend that several of the mandatory disclosures be modified to provide more accurate information to consumers, as detailed in our response to Question 20 below.

5. *Compliance:* Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

NFDA is not aware of any statistical data on the degree of compliance with the Funeral Rule by funeral providers. While the FTC undercover shopping program shows that 77.1% of the funeral homes shopped by the FTC from 2007 through 2019 distributed price lists in the form and manner required by the Rule, for reasons stated below, those figures substantially understate compliance.

As noted in NFDA's responses to Questions 3, 6, 10, and 13, the price list distribution requirements for the general price list, casket price list and outer burial container price list are vague, overbroad, and inconsistently interpreted by the FTC Staff. Probably the best evidence of this inconsistency can be found in the undercover shopping results reported by the FTC each year.

For example, in 2017, the FTC undercover shoppers visited 19 Fort Wayne, Indiana funeral homes. Every one of those 19 funeral homes distributed price lists in a compliant manner to the undercover shoppers. However, less than 150 miles away, the FTC undercover shoppers found that 46% of the 15 funeral homes in Lansing, Michigan that they shopped failed to distribute the price lists as required by the Funeral Rule.

Similar anomalous results can be found throughout the reports of the FTC undercover shops. In 2016, the FTC engaged in four undercover shopping campaigns. In three of those campaigns, the overall compliance rate was an excellent 94% (a total of 31 out of 33 funeral homes in compliance). However, in the fourth undercover shop conducted in New Mexico, the compliance rate was an abysmal 36% (only 5 of 14 funeral homes in compliance). And, those glaring disparities do not just occur among different cities. In 2014, undercover shoppers found that only 37% (4 of 11) funeral homes in Bakersfield, California to be compliant while two years later the compliance rate soared to 100% in Bakersfield (10 out of 10).

Some may dismiss these wildly divergent compliance rates as a string of puzzling coincidences, but it is far more likely that they result from differing interpretations by undercover shoppers trying to decide when a price list must be given out by a funeral director under the Funeral Rule. NFDA believes that if the Funeral Rule were modified to provide clear and precise price list distribution requirements that funeral homes and FTC regulators could easily understand, the compliance rate would be substantially higher than the 77.1% result reported by FTC undercover shopping results.

Another strong indicator that the Funeral Rule compliance is high is the extremely low levels of consumer complaints against funeral homes filed with the FTC. In 2019, there were

approximately 2.8 million deaths in the United States and the FTC received only 1,105 funeral-related complaints from consumers.⁴⁹ Of the 3.2 million consumer complaints the FTC received last year, less than .04% pertained to funeral service.

Nor was 2019 an aberration. Over the past five years, the FTC has received over 15 million consumer complaints and only 5,729 have pertained to funeral service.⁵⁰ During that same time period, there have been over 14 million deaths in the United States. If funeral homes were routinely violating the Funeral Rule by failing to give out price lists or making consumers purchase items they do not want or misrepresenting legal requirements, the level of consumer complaints would be hundreds times more than the current rate of one complaint for every 2,500 funerals. A complaint rate of less than .04% would indicate a profession that is serving its clientele at an extremely high rate of satisfaction.

That high rate of consumer satisfaction is reflected in the results in NFDA's Family Satisfaction Surveys found in Exhibit B. NFDA offers its member funeral homes a Family Satisfaction Survey program under which families the funeral home has served will be sent an online or a paper survey shortly after the funeral. The families then send the completed survey questionnaire to NFDA which compiles the data and forwards it to the funeral home.

On Exhibit B, the results of the four Family Satisfaction Survey from 2016-2019 are shown. Among the principal takeaways from the Family Satisfaction Surveys are the following:

- Level of Satisfaction. On a 1 to 10 scale with 10 being excellent and 1 being poor, the composite overall rating for all the funeral homes in the four years of this survey was 9.85. This is an extraordinarily high satisfaction rate for a service business.⁵¹
- Value of Service. When asked to rate the "value of services" that the consumer received, the composite rating for the four years was 9.77 on a 1-10 scale. This near-excellent score shows the high value of satisfaction by funeral consumers.
- Understanding Prices. When asked about the cost of services and merchandise, 83% of consumers indicated the cost was what they expected, 10.6% of consumers thought it was higher than what they expected, and 6.5% found the prices to be lower than they expected. This shows that the overwhelming majority of consumers have a good understanding of funeral home prices and the services and merchandise they expect to receive for those prices.

⁴⁹ Consumer Sentinel Network Data Book 2019, p 7.

⁵⁰ See Consumer Sentinel Network Data Books 2015-2019.

⁵¹ The American Customer Satisfaction Index Retail and Consumer Shopping Report demonstrated that overall consumer satisfaction for retail trade in 2019 at 77.3% (7.7% on a 1-10 scale). The high consumer satisfaction ratings for funeral homes are not a recent phenomenon. In the Replication Study, which was the 1987 survey of funeral consumers that the FTC commissioned, 83% of consumers reported being very satisfied and 11% reported being somewhat satisfied with their funeral services. Compared to this combined 94% satisfaction rating, only 3% of consumers in the Replication Study reported any level of dissatisfaction. Table III-10.

In addition to NFDA's Family Satisfaction Surveys, NFDA also reached out to Graystone Associates, Inc., a leading professional development and business advisory firm that specializes in the funeral service market. Graystone Associates sends post-funeral surveys to families served by its funeral home clients to track performance and satisfaction. It has a 40% response rate which is four times the average response rate.

Below is the report that Graystone Associates provided to NFDA in response to our request to share the overall results of its funeral consumer satisfaction surveys:

"Founded in 2003, Graystone has more than 17 years of experience working with independent firms throughout North America and Southeast Asia. Data analytics is a core metric used to assist our clients in customer service delivery. We currently process over 90,000 surveys annually for our clients. The resulting customer responses and ratings indicate that there is an extremely high level of customer service being delivered to funeral home consumers on a regular and frequent basis. Specifically, we include survey questions in our survey that would lend themselves to consumer confidence in funeral service providers. These questions include 'Did the Arranger Allow You to Carry Out Your Own Wishes', 'Did the Arranger Fully Explain Options and Prices', 'Did the Arranger Tactfully Explain Policy Relative to Payment', and 'Was Your Arranger Honest and Sincere?'

Over the past 10 years, families served by our clients have provided over 250,000 individual responses *annually* to the questions above resulting in over 90% Excellent ratings from the response options of Excellent, Good, Fair or Poor. Conversely, there is a 1% or less percentage of total Fair or Poor ratings over the past same 10-year period in response to the same questions. In addition, consumers used the words 'cost' or 'expensive' in these survey comments less than 230 times *annually* to describe a negative experience."

NFDA's and Graystone Associate's consumer satisfaction survey results add further evidence that the compliance rate of the funeral providers with the Funeral Rule is very high. If consumers were not being provided price information, if they felt pressured to purchase unwanted items, if funeral providers were misleading them, or if the consumer was not receiving value for the money being paid, we would not see such extraordinary high consumer satisfaction levels.

6. *Possible Recommended Changes:* What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

Throughout these Comments, NFDA has proposed a number of modifications to the Funeral Rule that would make it more clear-cut, effective and up-to-date. Additionally, instead of merely describing the changes that NFDA is advocating, it actually drafted the modifications and the additions to the wording of the Funeral Rule. Attached as Exhibit A is a redline copy that shows each of the 13 changes to the Rule that NFDA is proposing.

On Exhibit A, NFDA has numbered each of the 13 changes in the right-hand margin. Below is a corresponding list where NFDA indicates where in these responses it explains its rationale for the each proposed modification:

1. Definition of Immediate Burial. As explained in NFDA's response to Question 7(c), NFDA is proposing that the reference to "graveside service" be deleted from the definition of immediate burial.

2. Practical Necessity. In Section 453.1 of the Funeral Rule, NFDA wants to add a definition of "practical necessity." A good or service will be regarded as a "practical necessity" if, in the absence of such good or service, it would be impossible, impractical, or excessively burdensome for the funeral provider to provide the funeral or disposition services. In Section 453.4(b)(ii), NFDA is proposing a corresponding change that would recognize that the funeral provider does not violate the Funeral Rule by requiring a consumer to purchase a good or service that is a practical necessity.

The term "practical necessity" has been used by the Commission throughout forty years of Funeral Rule proceedings. For example, in the original Statement of Basis and Purpose, the FTC discussed embalming as a "practical necessity" when there is a viewing that will be held several days before disposition.⁵² In the January 11, 1994 Statement of Basis and Purpose issued in conjunction with the amended Funeral Rule, the FTC explained that the Funeral Rule prohibits a funeral provider from requiring a consumer to purchase an unwanted item unless the item were required by law or was a "practical necessity."⁵³

While the FTC has recognized in the original Statement of Basis and Purpose and the Statement of Basis and Purpose that accompanied the amended Funeral Rule that funeral directors may require a purchase of an item that is a "practical necessity", there is no reference

⁵² 47 Fed. Reg. 42260, 42275 (September 24, 1982).

⁵³ 59 Fed. Reg. 1592, 1602-03 (January 11, 1994). See also *Id.* at p. 1608, n162.

to that fact in the Funeral Rule itself. The Rule does permit a funeral provider to refuse to provide “a combination of goods and services which would be impossible, impractical or excessively burdensome to provide”⁵⁴ However, the Rule is silent on whether a funeral provider may require the purchase of a certain item as a “practical necessity.”⁵⁵

To formally acknowledge that the Funeral Rule does permit a funeral provider to require the purchase of an item that is a practical necessity, NFDA is proposing the changes noted in Section 2 of Exhibit A.

3. Responses to Telephone Price Inquiries. In the July 9, 1985 FTC Staff Compliance Guidelines, Illustration #8 in Section III asked whether funeral providers must respond to a telephone price inquiry received after hours. The FTC Staff advised that funeral providers are only required to provide telephone price information during “normal business hours of the funeral home.”⁵⁶ NFDA is requesting a minor modification to Section 453.2(b)(1) to codify this clarification in the Rule.

4. Distributing Casket Price Lists and Outer Burial Container Price Lists. In responses to Questions 3, 10, and 13, NFDA explains that the distribution requirements for casket price lists and outer burial container price lists should be clarified so that they are triggered by a price inquiry or before selection of any of those products.

5. Virtual Casket Price Lists and Outer Burial Container Price Lists. The FTC Staff has advised in Opinion Letter 07-9 (October 1, 2007), that casket prices and outer burial container prices may be presented to consumers by use of software programs as long as such programs contain all the information required to be found on a casket price list and an outer burial container price list. NFDA would request that the FTC make a minor addition to Sections 453.2(b)(2)(ii) and (3)(ii) of the Funeral Rule to recognize that computer programs may serve as virtual casket price lists and outer burial container price lists.

6. Distribution of General Price List. In its responses to Questions 3, 10 and 13, NFDA addresses its rationale for proposed modifications to the distribution requirements for the general price list.

7. Direct Cremation Options. NFDA is proposing that the direct cremation options that have to be listed on the general price list be clarified and that the price range of the lowest and highest price direct cremation be replaced by a listing of the lowest price direct cremation. The rationale for those changes is provided in NFDA’s responses to Questions 7(a) and 7(b).

⁵⁴ 16 C.F.R. § 453.4(b)(ii).

⁵⁵ Other examples of practical necessities can be found. While requiring embalming for public viewing is a practical necessity, so can compelling a consumer to use a casket for a funeral or an alternative container for a cremation. A further example might be requiring a family to use a police motorcycle escort for a funeral procession in a high traffic urban area.

⁵⁶ 50 Fed. Reg. 28062, 28065 (July 9, 1985).

8. Casket Price Range and Outer Burial Container Price Range. In its response to Question 7(a), NFDA explains why it believes the price ranges for caskets and outer burial container should be replaced by a provision which requires funeral homes to list on their general price list their lowest priced casket and lowest priced outer burial container.

9. Variable Basic Service Fee. NFDA's rationale for proposing a variable basic service fee is set forth in its response to Question 19.

10. Mandatory Disclosure on Embalming. In its response to Question 20(b), NFDA proposes changes to the mandatory disclosure regarding the legal requirements of embalming so it provides better and more accurate information to consumers.

11. Mandatory Disclosure Regarding Outer Burial Containers. As explained in NFDA's response to Question 20(c), it believes that the mandatory disclosure regarding the legal and practical requirements of outer burial containers should be revised to delete misleading information in the disclosure.

12. Mark-Up on Cash Advance Items. In its response to Question 7(d), NFDA explains why the definition of a cash advance mark-up should be revised to exclude rebates, commissions, or trade or volume discounts that are subsequently received by the funeral home.

13. Coordinating and Receiving Third-Party Merchandise. In its response to Question 22, NFDA explains that funeral homes are providing services in coordinating and receiving shipments of third-party merchandise and should be able to charge consumers for the cost of their actual labor in providing these services.

7. *Unnecessary Provisions:* Provide any evidence, including empirical analyses, concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

NFDA has the following four recommendations for deleting or modifying requirements of the Funeral Rule that provide no benefits to consumers and which each impose compliance costs on funeral providers:

(a) Eliminate Price Ranges. Section 453.2(b)(4)(ii) of the Funeral Rule currently requires funeral providers to quote price ranges for caskets, outer burial containers, direct cremations and immediate burials. On the general price list, the funeral provider must list a price range of its lowest and highest priced caskets and a price range for its highest and lowest priced outer burial containers. Both price ranges must also be accompanied by a mandatory disclosure informing consumers that a complete price list will be provided at the funeral home.

With direct cremation and immediate burial, the funeral provider is required to quote price ranges of its lowest and highest priced options for those alternative services. In the case of immediate burial, a funeral home would have to add the price of its most expensive casket to its immediate burial price and list that as the upper price range for immediate burial. With direct cremation, the funeral provider would have to go through the same exercise with its most expensive wood casket that was capable of being cremated.

NFDA believes that there is absolutely no consumer benefit in listing the upper levels of these assorted price ranges. Knowing the price of the most expensive casket or burial vault does not help a consumer select a particular funeral home or a specific casket or vault. The small percentage of consumers who do price shopping are interested in the lowest price that the funeral home charges, not the highest. The upper price range is universally ignored by consumers and only serves as a requirement that imposes additional compliance burdens on funeral providers who need to update and replace copies of the general price list whenever the price for the most expensive casket or outer burial container is changed.

The same conclusion applies to the upper price range for direct cremation and immediate burial. A consumer who is price shopping for direct cremation or immediate burial is only interested in the lowest price available, not the highest price.

NFDA would recommend that the Funeral Rule be revised to provide that a funeral provider must list on its general price list the least expensive casket and outer burial container that it offers for sale. Similarly, with direct cremation and immediate burial, the funeral home would list the price of those two alternate services with its least expensive container and casket. This is the information that a comparison shopper is interested in. In Exhibit A,

NFDA has made the appropriate revisions to Section 453.2(b)(4)(ii) to show how these changes could be worded.

(b) Direct Cremation and Immediate Burial Options. As noted above, NFDA is recommending that the Funeral Rule be modified to eliminate the listing of the most expensive direct cremation and immediate burial options that a funeral provider offers. In connection with that modification, NFDA is also advocating that the Funeral Rule requirements for listing direct cremation and immediate burial options be pared down. Currently, Section 453.2(b)(4)(ii)(C)(2) requires a funeral provider to list for each cremation container that the funeral provider offers for sale how much a direct cremation would cost if combined with that cremation container. Additionally, Section 453.2(b)(4)(ii)(D)(2) requires the funeral provider to list for each casket it sells how much an immediate burial package would be if combined with that casket.

Because a typical funeral home may offer up to twenty caskets, the FTC Staff realized that following the letter of the Rule would require the funeral home to offer twenty different immediate burial offerings. Fortunately, the FTC Staff has not enforced the Funeral Rule to require those listings. However, it makes sense for the Funeral Rule to be modified to change the provision and list the information that a consumer who is price shopping would want, namely, what are the lowest cost options for immediate burials and direct cremations.

To provide the information that a consumer wants, NFDA has proposed that the applicable sections be amended to require a funeral provider to list the price of a direct cremation if the consumer provides his or her own container and the price of a direct cremation with the lowest priced alternative container provided by the funeral home. A similar provision would apply for immediate burial. The modified language is provided in Exhibit A.

(c) Definition of Immediate Burial. Immediate burial, direct cremation, forwarding of remains and receiving of remains are the four alternative service packages which the funeral home must place on the general price list if it offers them. Each of the alternative services offers the consumers a one-price service to have the body transported or to have a disposition without requiring the purchase of any rites or ceremonies⁵⁷. However, in the sole case of immediate burial, the FTC included in a footnote in the Statement of Basis and Purpose that a funeral home could include “perhaps a brief graveside service”⁵⁸.

That notation regarding a graveside service as part of the immediate burial package found its way into the definition of “immediate burial” in Section 453.1(k) of the Funeral Rule. That definition now reads as follows:

⁵⁷ Statement of Basis and Purpose, 47 Fed. Reg. 42260, 42285 (September 24, 1982).

⁵⁸ *Id.* at 42285, n. 269.

“(k) *Immediate burial*. 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.”

This definition presents a compliance problem for funeral homes and a potential burden for consumers. Most consumers who are purchasing an immediate burial do not want any rites or ceremonies, including a graveside funeral service. However, if a funeral provider follows the definition of immediate burial, it will have to include a graveside ceremony as part of the immediate burial charge. This would require those consumers to pay for an item they do not wish.

On the other hand, if the funeral provider opts not to include a graveside service in the immediate burial package, a consumer who wanted one and did not want to pay any additional amount for that service could point to the definition of immediate burial in the Funeral Rule and demand that a graveside service be included as part of the package.

To resolve this dilemma, NFDA is advocating that the words “except for a graveside service” be deleted from the end of Section 453.1(k). This will eliminate any instance of immediate burial consumers being compelled to pay for graveside services they do not want.

(d) Cash Advance Items. Section 453.3(f) of the Funeral Rule indicates that it is a deceptive act for funeral providers to fail to disclose mark-ups on cash advance items. According to that section, mark-ups may not only include the funeral director increasing the actual cost of the cash advance, but also the receipt by the funeral director of a rebate, commission, or trade or volume discounts that is not subsequently passed on to the funeral consumer.

NFDA is recommending that the FTC amend Section 453.3(f)(2) so that rebates and trade or volume discounts are not regarded as mark-ups on cash advance items. Funeral providers often receive these rebates or volume and trade discounts at the end of a year or a billing cycle. Therefore, when any particular cash advance item is purchased, funeral directors may be unaware if they will qualify for the future discount or rebate. That makes it impossible for them to designate on the Statement of Funeral Goods and Services Selected whether an item has been marked-up since they will not know if they qualify for a discount or rebate until weeks or months later. In essence, the Rule is requiring funeral providers to guess whether they may or may not qualify for a future discount or rebate over which they have no control.

The rationale behind the cash advance disclosure is that it would alert consumers when they are being charged for a cash advance item so the consumer could “elect to obtain the item directly and save on the service fee”⁵⁹. It is not clear to what extent, if any, that consumers

⁵⁹ 47 Fed. Reg. at 42260, 42295 (September 24, 1982).

are actually purchasing cash advance items themselves to avoid mark-ups. However, it is clear that treating rebates and volume and trade discounts a funeral provider receives as a mark-up does not assist consumers in any respect. Since consumers would be ineligible to receive these rebates or volume or trade discounts, they do not save money by buying these cash advance items themselves rather than from the funeral provider.

Because identifying volume and trade discounts and rebates as mark-ups does not benefit consumers and does impose compliance costs for funeral homes, NFDA is requesting that Section 453.3(f)(2) be amended to delete the references to volume and trade discounts and rebates. A modified Section 453.3(f)(2) can be found in Exhibit A.

8. *Additional Unfair or Deceptive Practices:* What potentially unfair or deceptive practices, not covered by the Rule, related to funeral goods and services, are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible. With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

As the FTC Staff is well aware, a primary source of harm to funeral consumers is the unchecked and illegal activities of Heritage Cremation Providers (“Heritage”). Heritage, which sells low-cremation services to consumers through www.heritagecremationproviders.com, is not licensed in any state nor does it provide cremation services. Instead, falsely portraying itself as a local, family-owned funeral home, it farms out the cremation services that it sells to unsuspecting funeral homes and crematories as trade calls. When state regulators and funeral organizations like NFDA have alerted funeral homes and crematories of Heritage’s illegal activities and deception, Heritage simply operates under other business names such as Legacy Funeral Services, Legacy Cremation Services, Families First Funeral Services, and The Funeral Group.

Even a cursory internet search of “Heritage Cremation Providers” will show the trail of consumer rip-offs, abuses and scandals this business has amassed over the past five years. On Yelp, Heritage has over 50 negative consumer reviews replete with words such as “fraud”, “thief”, “scam”, “unscrupulous”, “horrible”, “shoddy”, “rip-off”, etc. The Better Business Bureau has issued an “F” rating for Heritage and published a number of warnings to consumers. NFDA has heard from multiple consumers about Heritage misplacing bodies, abandoning bodies, losing cremated remains, demanding more funds to complete cremations, harassing consumers, requiring purchases of unwanted items, and other deceptions. Any funeral home or crematory licensed by a state would have lost its license to operate after committing a fraction of the offenses and abuses that is part of Heritage’s standard operating procedures.

Government efforts to bring a stop to Heritage’s operations have begun and ended with state governments. A number of state funeral boards and attorney general offices have taken action against Heritage and its owner, A.J. Damiano. The states of Arizona, Colorado, Florida, Georgia, Massachusetts, Minnesota, North Carolina, Oregon and Tennessee have all opened investigations, issued cease and desist orders and injunctions against Heritage, and/or published consumer warnings. However, by selling over the internet and relocating to another state whenever the heat is turned up too high, Heritage can continue to rip-off consumers.

Because state regulation stops at state borders, Heritage can continue its unlawful activities on the internet despite multiple state cease and desist orders.

The only way to bring a stop to the consumer abuses perpetuated by Heritage is through federal action. Yet, the FTC and other federal enforcement agencies have turned an apparent blind eye to the activities of Heritage. In response to a recent Freedom of Information Act request, the FTC conceded that it had received 18 consumer complaints against Heritage over the past five years. To date, the FTC has taken no action against Heritage or its ownership. Heritage remains in business and continues to prey consumers despite multiple cease and desist orders issued by state authorities. Federal action is needed to stop this ongoing abuse of funeral consumers.

9. *Product and Service Coverage:* Should the Commission broaden the Rule to include products or services not currently covered? Provide any evidence that supports your position. What potentially unfair or deceptive practices related to products or services not covered by the Rule are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible.

There are many products and services that funeral providers offer for sale that are not covered by the Funeral Rule and not required to appear on the general price list. Examples include body donation, disinterment, receptions, catering, identification viewing, prayer services, private family viewing, receiving cremated remains, memorial service (when funeral home does not perform the disposition), committal service, estate fee, insurance filing fee, insurance assignment fee, removal of pacemaker, scattering of cremated remains, mailing of cremated remains, funeral escort, pallbearers, flower van, service car, clergy car, webcasting service, memorial DVD, memorial cards, registered books, prayer cards, tribute candles, burial shrouds, flag cases, urns, cremation jewelry, Thumbies, and audio-visual equipment.

None of the above items are required to be shown on the general price list. But, of course, funeral providers list these items if they offer them for sale so consumers are aware of and purchase the products and services. Like any business, funeral providers need to sell merchandise and services to produce revenue. It is axiomatic that if they hope to sell an item, they will make the consumer aware of it by listing it for sale on the general price list.

As detailed in the response to Question 16, in the 36 years since the Funeral Rule was put in place, the number of cremations in the US has gone up 500%. In 2017, the number of cremations in the US was 1,454,600. While NFDA is not aware of the exact number of urns that were sold by funeral homes in 2017 for the 1,454,600 cremations, it is a fair estimate that it was well over one million.

It is interesting to note that although urns are not required to be listed on the general price list or on a specific urn price list, that with over one million sales of urns by funeral homes, there is no evidence of any consumer complaint that funeral homes are not listing urn prices or failing to list inexpensive urns for sale. What accounts for that fact? The market.

Funeral homes want to sell urns to cremation consumers and will offer a range of urns in different price settings in order to do so. Because funeral homes know that consumers can purchase urns on the internet or from retail outlets, they need to compete on all price levels. The same, of course, is true with caskets. Caskets are available online, through Costco and

Wal-Mart, in retail casket stores, from cemeteries and from competing funeral homes. A funeral home that does not list caskets in all available price ranges risk losing a casket sale to a competitor.

In essence, the market controls what funeral providers and other sellers in the death care market offer and how they price those offerings. Unlike 1984, when the Funeral Rule first took effect, there are now readily available sellers of funeral merchandise, disposition services, and memorialization events other than funeral providers. Caskets, urns and memorial items like candles, cremation jewelry, and printed materials are readily available over the internet or through retail outlets. Crematories and cremation societies that offer direct disposition without having to use a funeral home are easily located on the internet or through advertising. And hotels, restaurants, country clubs and event centers are all competing to hold memorial events and celebration of life gatherings as alternatives to funerals. If consumers do not see products or services offered by the funeral home in the price range they want, they have readily available alternative sources. Funeral homes are well aware of that competition and market their merchandise and services accordingly.

10. *Technological or Economic Changes:* What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

When the Funeral Rule was formulated back in the 1970's, the primary method to deliver price information was in-person visits and over the telephone. Both of these methods were incorporated into the Funeral Rule with funeral providers required to distribute price lists at the beginning of any in-person discussion and to provide price information over the telephone when requested.

In the forty plus years since the Rule was developed, new ways to transmit information quickly and inexpensively have been developed and are in wide use by businesses and consumers. The Funeral Rule needs to be updated to incorporate these information distribution systems as permissible options in transmitting general price lists to consumers.

Exhibit A shows the modifications that NFDA is proposing to Section 453.2(b)(4)(i) regarding the distribution of the GPL. NFDA is recommending that any consumer who wishes to obtain a GPL be able to request and receive it from the funeral provider. This is a significant enhancement to the Funeral Rule since currently a GPL only has to be distributed during a face-to-face discussion.

In addition to recommending that consumers be able to obtain a GPL by requesting it, NFDA would also propose that the Funeral Rule be updated to allow funeral providers an array of different options to transmit a copy of the GPL to consumers. The options included in NFDA's proposal are personal delivery, U.S. Mail, electronic mail, telefax, or by posting a link to its GPL on the funeral home webpage with the word "price information."⁶⁰

In addition to the enhanced GPL distribution options, NFDA is also proposing that any funeral provider that sells funeral goods or services over a website should post a link to its GPL on its homepage with the words "price information." While funeral homes that sell funeral goods or services over the internet currently post prices, the consumer should have ready access to the funeral provider's GPL. Therefore, if a funeral provider is offering to sell funeral goods or services through their website, the funeral home should have a link to its GPL readily available to the consumer.

⁶⁰ This latter proposal is modeled after Section 7685 of the California Business and Professions Code.

11. *Conflicts with Other Requirements:* Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not? Are there any Rule changes necessary to help state law enforcement agencies combat deceptive practices in the funeral services market?

The licensing and regulation of funeral homes is entirely state-based with one notable exception – the FTC Funeral Rule. All other aspects of the funeral and death care markets are regulated by state laws and rules. Why is there this dichotomy?

The primary reason for this two-tier system of regulation is that the FTC Funeral Rule was promulgated at the forefront of the consumer rights movement and preempted any state efforts to regulate funeral price disclosures. Most states, seeing that the FTC was developing the Funeral Rule in the 1970's, simply ceded this area of regulation to the federal government.⁶¹

In a study NFDA did several years ago, it found that 23 states had incorporated the FTC Funeral Rule into state law or regulation while 11 states had adopted price disclosure laws similar to the Funeral Rule. For the most part, the 11 states with the price disclosure laws or regulations closely mirrored the requirements of the Funeral Rule. Some states, like California and Texas, added additional disclosures. Other states, like Minnesota, have enacted a much more comprehensive law that covers all sellers of funeral or cemetery goods or services.

Of the states that have their own funeral price disclosure law, one where there is the most significant conflicts with the Funeral Rule is New York. New York requires funeral homes to have on their general price list a series of mandatory disclosures that are similar to the mandatory disclosures required by the Funeral Rule, but contain minor word differences. In addition, New York requires that facilities and service charges for the visitation, funeral ceremony, and memorial service must be separately itemized out while the FTC requires services and facilities fees to be combined. As a result, general price lists of New York funeral homes contain two sets of similarly worded mandatory disclosures and two methods of pricing visitations, funeral ceremonies, and memorial services. To a consumer, it is confusing and redundant.

⁶¹ When the Funeral Rule was promulgated by the Commission, it recognized that price disclosure regulation by the states would have "significant benefits over regulation at the federal level." Statement of Basis and Purpose, 47 Fed. Reg. at 42289 (September 24, 1982).

One section of the Funeral Rule that has been overlooked and underused is Section 453.9. That provision allows a state agency to apply to the FTC for a state exemption from the Funeral Rule. In other words, the FTC would exempt all of the funeral providers in that state from the requirements of the Funeral Rule and leave it to the state to enforce its own price disclosure regulation.

In the 36 year history of the Funeral Rule, the FTC has granted only a partial exemption to the State of Arizona. That exemption was granted in the first few years that the Rule was in effect. Exemption applications by the States of Texas and New York were not granted. The unsuccessful attempt by New York, which involved protracted negotiations over a lengthy period of time, chilled any interest that other states had in seeking an exemption.

Given that all other aspects of funeral and death care markets are regulated by the states, it makes sense for the states to also regulate price disclosures. As nearly every state has a regulatory agency that routinely inspects funeral homes, the state is in a much better position to enforce price disclosures.⁶² To encourage states to take on price disclosure regulation and to tailor laws and regulations to the death care market in the particular state, the FTC may want to reach out to states that have price disclosure laws equivalent to the Funeral Rule and encourage them to apply for an exemption.

⁶² In the original Statement of Basis and Purpose, the FTC acknowledged that state regulators would be better able than the FTC to keep abreast of non-compliance in local areas. *Id.*

12. Other State or Local Laws or Regulations: Are there state or local laws or regulations that lessen competition or impede consumer protection in the funeral-services market? Provide any evidence that supports your position. Should the Commission, through its advocacy work, encourage changes to these state or local laws or regulations? If so, what changes?

To the extent that state laws require funeral homes, funeral directors, and embalmers to be licensed, they lessen competition. Indeed, in the past decade, many libertarian advocacy groups have been waging a very aggressive campaign to eliminate or lessen state licensing requirements in the funeral profession as well as other profession and trades. Their argument is that licensing limits the number of providers in a given market, and thereby, reduces competition.

On the other hand, the absence of licensing means that there is no assurance that a service provider has the necessary levels of education, experience or expertise needed to provide competent services. In addition, there is no accountability for a service provider who engages in fraudulent or deceptive practices. The FTC need look no further than the nationwide trail of consumer abuses left in the wake of the unchecked and unlicensed activities of Heritage Cremation Providers (see response to Question #8), to see what happens when there is no licensing or accountability.

Probably the most contentious past competition issue posed by state laws in the death care market concerned the sale of caskets. Years ago, several states prohibited the sale of caskets except to a licensed funeral home or funeral director. Some of the laws were struck down by court order⁶³, while others were simply repealed or not enforced. To date, only the States of Virginia and Oklahoma have a law prohibiting casket sales by non-licensed businesses or individuals. And, while NFDA has no data one way or the other, it is highly likely that consumers in these two states can easily purchase third party caskets over the internet from out-of-state sellers.

Other than the restrictions on casket sales in the two states named above, NFDA is not aware of any state or local laws that lessen competition in the death care market. As evidenced by the high consumer satisfaction survey results and the consistent lack of consumer complaints received by the FTC funeral providers, the market is performing well.

⁶³ See *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir., 2002)(Striking down Tennessee's law restricting casket sales); *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir., 2013).

13. Online and Electronic Price List Information:

- a. Should all funeral providers be required to post their itemized GPLs, CPLs or OBCPLs online? Why or why not?**
- b. Should funeral providers that have websites be required to post their itemized GPL, CPLs or OBCPLs online? Alternatively, should they be required to provide an email address or other online mechanism for a website visitor to request the itemized price list information electronically and be subject to a time limit for replying to such requests? Why or why not?**
- c. If a funeral provider makes funeral arrangements without an in-person meeting (such as through a phone call, website, email, or text), should the funeral provider be required to provide an electronic copy of its itemized GPL, CPL, or OBCPL prior to a consumer making any selections? Why or why not?**
- d. How would any of these suggested modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses? Please quantify or estimate these costs and benefits wherever possible.**

(a), (b), and (d). When the FTC decided not to reopen the Funeral Rule for a second review in 2008, it set forth the “rigorous standards” it must satisfy before it can make a substantive amendment to a trade regulation rule such as the Funeral Rule.⁶⁴ In that regard, the FTC explained the requirements it would need to fulfill in order to adopt an amendment to the Funeral Rule as follows:

“When deciding whether to promulgate or amend a rule, the Commission engages in a multi-step inquiry. Initially, the Commission requires evidence that an existing act or practice is legally unfair or deceptive. The Commission then requires affirmative answers, based upon the predominance of reliable evidence, to the following four questions:

- (1). Is the act or practice prevalent?
 - (2). Does a significant harm exist?
 - (3). Would the rule provision under consideration reduce that harm?
- and

⁶⁴ 73 Fed. Reg. 13740, 13742 (March 14, 2008) referencing 15 U.S.C. § 57a(d)(2)(B).

(4). Will the benefit of the rule exceed its cost?⁶⁵

In order for the FTC to require funeral providers to post GPLs, CPLs, OBCPLs, or links to price information on websites, it must first find that the failure to do so is an unfair act or practice.⁶⁶ The December 17, 1980 FTC Policy Statement on Unfairness provides as follows on the three elements that all must be demonstrated in order for a practice to be declared unfair by the FTC:

“To justify a finding of unfairness, the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could have not reasonably have avoided.”⁶⁷

The failure of funeral providers to post price information online does not cause substantial injuries to consumers. For the past 36 years, the Funeral Rule has required funeral homes to distribute written and itemized price lists to any consumer who comes to the funeral home in person and asks about funeral goods, services, prices or arrangements. Moreover, the Rule requires a funeral home to provide accurate price information to anyone who telephones the funeral home seeking it. There is no evidence that consumers who want funeral price information have any problem in obtaining it. Therefore, there is no injury whatsoever, much less substantial injury.

In NFDA’s annual Funeral Consumer Surveys from 2012 to 2020, funeral consumers were asked how many funeral homes they contacted or visited the last time they planned a funeral. The composite results from the nine annual surveys reported that 80.7% of consumers contacted only one funeral home and 17.0% of consumers contacted two or more.⁶⁸

The surveys then asked the 17.0% of consumers who contacted or visited more than one funeral home if one of the reasons for contacting or visiting the funeral home was to compare prices. 56.2% of the consumers reported that obtaining price information was one of the reasons for contacting or visiting the funeral home. This means that of all the funeral consumers in the survey, 9.6% (17.0% x 56.2%) of them contacted or visited two or more funeral homes to, among other things, compare prices.

⁶⁵ *Id.*

⁶⁶ The failure to post price information online would not be deceptive. According to the October 14, 1983 FTC Policy Statement on Deception, there must first be a representation, omission or practice that is likely to mislead the consumer in order to establish a deception. Since the failure to post price information does not constitute a representation, omission or practice to mislead, it would not constitute a deception.

⁶⁷ FTC Policy Statement on Unfairness, p.3 (December 17, 1980).

⁶⁸ This question was asked of those consumers who had arranged a funeral in the past five years. Approximately 2.3% of the responding consumers answered that they did not recall if they contacted more than one funeral home.

In the 2019 and 2020 NFDA Funeral Consumer Surveys, the consumers who contacted more than one funeral home and inquired about funeral prices were then asked how they contacted the funeral home.⁶⁹ Below are the composite results of the 2019 and 2020 surveys reporting how these consumers contacted the funeral home:

In-Person Visit to the Funeral Home.....	65.4%
By Telephoning the Funeral Home	24.8%
By Search on the Web	5.3%
By E-mailing the Funeral Home.....	4.5%

If we consider that of the 9.6% of consumers who inquired about price when contacting more than one funeral home, only 5.3% did so by going online, it shows that .51% (9.6% x 5.3%) of funeral consumers overall are going online to seek price information before selecting a funeral home. In other words, the FTC is being asked to mandate that all funeral homes in the country be required to post their price lists on their website because slightly more than 5 out of every 1,000 funeral consumers use the internet to check funeral prices.

Undoubtedly, proponents of requiring funeral homes to post prices online will argue that so few consumers use the internet to find prices because most funeral homes do not post prices. If that was the case, we would expect to see high levels of consumer frustration in obtaining price information from funeral homes. However, when the 2019 and 2020 Funeral Consumer Surveys asked consumers how easy or difficult was it for the price shopper to obtain price information from the funeral homes they contacted, the survey results were as follows:

Very Easy.....	19.54%
Easy.....	34.90%
Somewhat Easy.....	32.75%
Not Very Easy.....	10.85%
Not Easy At All.....	2.05%

In examining the above results, it is clear that 87% of consumers had no problem obtaining price information from the funeral home they contacted while 13% reported it was not easy to do so. In a transaction as complex as a funeral service can be, the 87% reporting no problem in obtaining price information is extremely high.

These Funeral Consumer Surveys show that there is no injury whatsoever sustained by consumers because funeral homes may not post price information on their websites. First, the data shows that slightly over 90% of consumers do not even look for price information when

⁶⁹ This question was added to the 2019 and 2020 Funeral Consumer Surveys. It was not asked prior to the 2019 survey.

selecting a funeral home.⁷⁰ Secondly, of those who do seek out price information, 65.4% do it by visiting the funeral home and 24.8% by telephoning the funeral home.

The very high level of funeral consumers who take the time and effort to personally visit the funeral home underscores the importance of this selection to the consumer. In addition to obtaining price information, the consumer wants to meet with the funeral director, view the facilities, and discuss options. It is difficult to obtain this type of information simply by phoning the funeral home or visiting its website.

Therefore, as to the first element of the consumer injury inquiry, there is no evidence of consumer injury, much less substantial injury. Consumers who wish to obtain price information have established methods to do so and report that it is fairly easy to obtain prices using those methods.

Another factor that the FTC indicates it will examine to determine if there evidence of substantial consumer injury is whether the conduct violates established public policy.⁷¹ Therefore, to determine whether a funeral provider's failure to post prices on the internet causes substantial consumer injury, the Commission will look to see if that conduct violates statutes and established judicial principles.⁷²

No state requires a funeral home to post a GPL, CPL, or OBCP on their website. California does require funeral homes with websites to post a link to their GPLs.⁷³ However, none of the 49 other states require any type of online posting of funeral price information. Moreover, no case law has ever found that the lack of funeral price information on a funeral home's website violates a public policy.

It is also instructive to examine federal and state laws and regulations governing other businesses. With the sole exception of the new Department of Health and Human Services regulation which mandates that hospitals post prices for certain procedures online, NFDA could not locate any other profession, trade or business which is required by federal or state law or regulations to post prices online.

The FTC recognized in its Policy Statement on Unfairness that a finding that conduct violates public policy cannot be based upon "the isolated decision of a single state or a single court."⁷⁴ Rather, for the Commission to rely upon public policy to find a certain conduct

⁷⁰ Only 9.6% of funeral consumers contacted or visited more than one funeral home for the purposes of obtaining price information.

⁷¹ FTC Policy Statement on Unfairness, p. 4 (December 17, 1980).

⁷² *Id.*

⁷³ California Business and Professions Code, Section 7685.

⁷⁴ FTC Policy Statement on Unfairness, p. 5 (December 17, 1980).

unfair, the policy against the conduct must be clear and well established.⁷⁵ Certainly, this is not the case here.

In the absence of public policy prohibiting the conduct in question, the FTC has stated that it will only act against the conduct “on the basis of convincing independent evidence that the practice was distorting the operation of the market and thereby causing unjustified consumer injury.”⁷⁶ No such evidence exists. On the contrary, the consumer survey evidence shows that of the distinct minority of funeral consumers who seek price information, they have readily available means to obtain it by in-person visits to the funeral home or by telephone. And, as the survey evidence also demonstrates, over 87% of consumers who do seek price information report no problem in obtaining it. Clearly, there is no substantial consumer injury from some funeral homes failing to post price lists on their websites.

As to the second element of proving unfairness, a requirement that every funeral provider in the U.S. be compelled to post price lists on their websites when survey data shows that less than 1% of consumers use the internet to price shop funeral homes would be a clear case of costs outweighing benefits. Given the fact that less than 10% of funeral consumers seek price information before selecting a funeral home and that an overwhelming majority of those 10% prefer to visit the funeral home (65.4%) or telephone the funeral home (24.6%), there is scant reason to believe that requiring all funeral homes to post price lists would benefit any consumers. However, to require the nation’s 20,000 funeral homes to post all their price lists on their websites and to add updates thereto would involve substantial initial and ongoing costs.

Even for the less than 1% of funeral consumers who do use the internet to price shop, there is no evidence that they have any problem accessing funeral price information on the internet. As NFDA’s Funeral Consumer Survey evidence showed, of the small minority of consumers who do price comparison shop, over 87% of them reported it was very easy, easy, or somewhat easy to obtain the price information they wanted.

That brings us to the third element that the Commission must demonstrate to find a practice unfair. Is the perceived injury (not being able to obtain price information from funeral home websites) an impediment that consumers themselves could not reasonably have avoided? In this regard, the Commission stated as follows in its Policy Statement on Unfairness:

“Finally, the injury must be one which consumers could not reasonably have avoided. Normally we expect the marketplace to be self-correcting, and we rely on consumer choice – the ability of

⁷⁵ *Id.*

⁷⁶ *Id.*

individual consumers to make their own price purchasing decisions without regulatory intervention - - to govern the market.”⁷⁷

The above quotation is directly applicable to the scenario where a consumer would seek funeral price information over the internet. If a consumer was dissatisfied because a particular funeral home did not post prices, the consumer would select a funeral home that did post prices.⁷⁸ That would penalize the funeral home that omitted to post prices and it would soon realize that in a price competitive market, it needs to post prices to compete. In other words, the market would self-correct.

The funeral market is not homogeneous across the United States. Rather, there are tens of thousands of submarkets in large metropolitan areas, midsize cities, neighborhoods, suburbs, towns, villages and remote rural areas. In some of these markets, where there is a high level of cremation, large transient populations, and less religious affiliations, funeral price competition will be fierce.⁷⁹ These would be the markets where consumers are price shopping. Funeral providers in these markets will post prices online since by not doing so, they will forfeit an opportunity to serve a segment of the market. The market self-corrects.

However, as the survey evidence seen in Question 1 above showed, in most markets, price is not the deciding factor that consumers use to select a funeral home. If there is no consumer demand for online price information, funeral homes will not be motivated to undertake the time and expense to post price lists and updates on their websites. Until the market directs them otherwise, there is no need to post online price information because consumers are not seeking online price information.

In many comments that the FTC has and will receive, primarily from members of funeral consumer groups and memorial societies, there will be claims of frustration that the consumer was unable to locate price information on a funeral home website. However, as the FTC Policy Statement on Unfairness recognizes, a finding of unfairness requires proof that the injury is “one the consumers could not reasonably have avoided.”⁸⁰ How can a consumer avoid the injury of not locating price information on a funeral home’s website? The consumer can easily obtain the price information he or she seeks by using the price access methods that the Funeral Rule has guaranteed for the past 36 years - - go to the funeral home and receive a

⁷⁷ FTC Policy Statement on Unfairness, p. 3 (December 17, 1980).

⁷⁸ “We [the FTC] anticipate that consumers will survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.” *Id.*

⁷⁹ Robert Tollison, the Director of the FTC Bureau of Economics in 1982, when commenting on why funeral markets in California and Florida were price competitive back in the early 1980s, explained that: “One would tend to find more overt price advertising and competition in areas with faster growth, where purchasers would not bring past experiences (simply because they had none). In such areas, funeral quality may be less important to the consumer since there would presumably be fewer family and friends around to participate in the services.” Tollison Memorandum to Commission, RE: Funeral Industry Trade Rule, July 16, 1982, p. 3.

⁸⁰ *Id.*

copy of a written and itemized GPL or pick up the telephone and ask for price information. Clearly, consumers have readily available avenues provided by the Funeral Rule to obtain price information other than through the internet.

The unfairness doctrine does not guarantee that a consumer must receive price information through the means that he or she finds most convenient. If that were the case, any business that did not distribute written price lists, and provide price information over the telephone, and text price information, and e-mail price information, and post price information online would be engaged in an unfair practice. As long as the business provides an available avenue for the consumer to obtain price information, there is no unfairness. Funeral homes have been providing those avenues for 36 years in compliance with the Funeral Rule. Because some funeral homes have not yet felt a consumer demand to post price information online does not constitute unfairness.

Finally, it needs to be pointed out that the price information that the funeral consumer groups claim cannot be located online is already online in a very accessible, convenient, effective and free format. Exhibit C is a list of the top 100 largest cities in the United States. Next to each city, NFDA has listed the number of funeral providers in a ten mile radius from the city center which offers direct cremation for under \$1,000 and the number of funeral homes that offer it from \$1,000 to \$1,500.

The direct cremation price information for these 100 metropolitan areas was collected and compiled in about two to three hours using www.funeralocity.com. Funeralocity.com, as well as websites such as www.parting.com, are free nationwide websites that list prices for funeral homes all over the country. With www.funeralocity.com, a consumer can put in a location, indicate a radius from that location, and obtain a list by price (least to most expensive) for direct cremation, affordable (immediate) burial, full service cremation, and traditional full service burial from every funeral home in the designated radius.

Therefore, even for funeral consumers who only wish to use the internet to price shop, they have ready access to the information they seek. Moreover, it is presented in a format that makes it effortless for consumers to compare prices. The website lists the funeral homes and their location by price. For each funeral home, the consumer can click on each of the package listings for that funeral home and receive an itemized list by price of the individual components comprising that package. In a matter of minutes, a consumer can view offerings and prices of multiple funeral homes in a defined radius.

Had a funeral consumer tried to accomplish this price comparison by locating and going to individual funeral home websites, compiling individual prices for all of the itemized goods and services comprising the funeral they want, adding those prices up, and then making a comparison, it would be significantly more difficult and time consuming. Very few consumers would have the time or ability to compile the information and make the price

comparisons that www.funeralocity.com provides in seconds. Funeral price information is not only available on the internet for any funeral home, but it is provided at no cost in a format that makes price comparison as simple as it could be.

In summary, none of the three elements of unfairness are present in this case. That being the case, the FTC has no legal basis upon which it can compel the nation's 20,000 funeral providers to post their price lists on their websites.

(c) In NFDA's response to Question 10 above, we recommend that the Funeral Rule be modified to require funeral providers to transmit a general price list to any consumer who contacts the funeral home and requests price information. The funeral home would have the option of transmitting the GPL by personal delivery, mail, fax, e-mail, or by posting a link to the general price on the funeral home website.⁸¹ The compliance costs for transmitting price lists in this manner would be minimal, especially since many funeral homes are already doing so.

In addition, NFDA also recommended that if a funeral home is offering to sell funeral goods or services over the internet, it be required to place a link to its general price list on its website.

⁸¹ It is interesting to note in NFDA's Funeral Consumer Surveys that of the small percentage of consumers who sought out price information before selecting a funeral home, the percentage of them emailing the funeral home (4.5%) was nearly equivalent to those who searched online (5.3%).

14. Casket and Outer Burial Container Information:

- a. Should funeral providers be required to provide the CPL and OBCPL at the same time as the GPL? Why or why not?**
- b. Should funeral providers be required to combine the casket and outer burial container price information and disclosures into the GPL? Why or why not?**
- c. Should funeral providers be required to give consumers copies of their CPL and their OBCPL to keep, as they are required to do for the GPL? Why or why not?**
- d. How would any of these suggested modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?**

(a) NFDA opposes any amendment to the Funeral Rule which would require funeral providers to provide the casket price list (CPL) and the outer burial container price list (OBCPL) at the same time as the general price list (GPL). Such a requirement would provide no benefit to consumers while at the same time confusing many consumers who would be presented multiple pages of offerings that do not apply to them. It would also eliminate a growing practice by funeral homes of using software programs to show caskets to consumers rather than using printed casket price lists and casket display areas. Over a dozen years ago, the FTC Staff approved the use of computer programs in lieu of printed casket price lists.⁸² With the FTC Staff's blessing, more and more funeral homes now utilize virtual CPLs as a more efficient and ecologically friendly method to present casket offerings to consumers.

Currently, the CPL is only required to be presented to a consumer if the consumer inquires about caskets or their prices. For a consumer who may not have any interest in purchasing a casket, such as a direct cremation consumer, to have a funeral director give him a CPL or an OBCPL as soon as there is any discussion of funeral services would be inappropriate at best and offensive at worst. For example, if a consumer informed the funeral director that he or she wanted cremation and the funeral director under this proposal had to offer them an OBCPL, the consumer would be perplexed and possibly angry. Many consumers would interpret that as the funeral director not listening to them or trying to steer them toward burial when they had just informed the funeral director they were interested in cremation.

⁸² See FTC Staff Advisory Opinion 07-9 (October 1, 2007). That Advisory Opinion explained that the Funeral Rule permits casket price lists to be in any format, including computer programs, as long as they contain the information the Funeral Rule requires to be included on the CPL.

This year, the burial rate in the United States is projected to be 37.5%. This means that in 62.5% of funerals being arranged, an OBCPL will have no relevance. Why then would the Funeral Rule require a funeral provider to foist on a consumer a price list for items the consumer did not ask about nor have any interest to purchase?

(b) The same objections noted above in regard to Subsection (a) would apply to a proposal to require funeral homes to add all of their caskets and outer burial container offerings to their GPLs. Some funeral homes, especially those that may offer limited numbers of caskets and outer burial containers, have already added caskets and outer burial containers to the GPL. But other funeral providers, especially those with multiple offerings of 20 to 30 caskets, plus an extensive listing of outer burial containers, fear that adding those offerings to the GPL will make it voluminous and unwieldy. Moreover, because many cremation customers have no interest in viewing metal caskets or any outer burial containers, providing them with pages of these listings is wasteful and unnecessary.

As noted above, the FTC Staff advised funeral homes over a dozen years ago that the Funeral Rule allowed caskets and outer burial container price information to be provided to consumers by the use of catalogs, charts, notebooks, and computer programs.⁸³ The Staff Advisory Opinion #07-9 referenced the fact that major casket companies had developed computer programs to display casket and price information that consumers viewed as a virtual CPL. The letter also noted the fact that many consumers preferred to examine casket information on the virtual CPL rather than actually viewing casket displays. If a funeral home is now required to list caskets and outer burial containers on the GPL, the use of computer programs as virtual CPLs will be preempted. This would be a disservice to consumers and funeral providers.

(c) & (d) Many funeral homes, relying upon the guidance provided by the FTC Staff in 2007, have switched to computer programs as virtual CPLs and OBCPLs. It is not feasible to provide consumers with copies of these electronic programs. Therefore, if the FTC were to amend the Funeral Rule to require CPLs and OBCPLs to be given for retention, funeral homes would be compelled to print and distribute paper copies of CPLs and OBCPLs instead of using virtual CPLs and OBCPLs.

In the original Funeral Rule proceeding, the FTC acknowledged the argument that it would be burdensome for funeral homes if they had to replace printed CPLs every time that the casket inventory changed. The FTC countered that argument by observing that CPLs do not have to be printed, but can be comprised of notebooks or catalogs since they do not have to be given out for retention. In that regard, the Commission held as follows in the original Statement of Basis and Purpose:

⁸³ *Id.*

“The rule requirement also has been written to minimize the burden which would be imposed on funeral providers when they change their inventory. The casket price list does not have to be prepared as a printed or written list. Instead, it may be displayed in other formats, such as a loose-leaf notebook with a page for each casket. If the funeral provider elects to use such a format, revising the list would only require removing one description and replacing it with another. Given this sort of flexibility, the requirement would not be unreasonably burdensome.⁸⁴”

The proposals to require caskets and outer burial containers to be listed on the GPL and/or to require the CPL and OBCPL to be given for retention will effectively eliminate the option of using computer programs as virtual price lists or using catalogs and notebooks in lieu of a printed CPL or OBCPL. This would increase compliance costs, be a tremendous waste of manpower and paper, and be a puzzling step back from virtual price lists to typewritten and printed paper copies. It is ironic that such a proposal would be made now when for the past 12 years the Funeral Rule has allowed the use of computer programs as virtual CPLs and OBCPLs.

The number of funeral consumers purchasing caskets and outer burial containers has been in a steady decline as cremation has increased. Just ten years ago, over half of consumers selected a burial while only 40% opted for cremation. Now, this has been reversed with 56.4% projected to select cremation in 2020 while only 37.5% opt for burial.⁸⁵ Moreover, NFDA projects that ten years from now, less than 25% of dispositions will be by burial.⁸⁶ What purpose is served by requiring funeral providers to give out printed price lists of caskets and outer burial containers for retention to every consumer when only a fraction of them have any need to purchase those items? It is a tremendous waste of paper and manpower which provides zero benefits to consumers, the majority of which have no interest in the products on the price lists.

There is also zero evidence that consumers would use a CPL or OBCPL to comparison shop. As noted in response to Question No. 1, the level of comparison shopping never significantly increased as the FTC predicted it would when the Funeral Rule was enacted. Moreover, the small increase in the level of comparison shopping is attributable to the increase in cremation.⁸⁷ However, cremation consumers have no need for outer burial containers and only limited interest in all of the caskets on the CPL. Providing the OBCPL and CPL to all consumers will not increase or improve comparison shopping and will only

⁸⁴ 47 Fed. Reg. at 42273 (September 24, 1982).

⁸⁵ NFDA Projected Deaths by Method of Disposition (2019)

⁸⁶ *Id.*

⁸⁷ See NFDA's comment to Question 1 above.

substantially increase compliance costs for funeral providers. Additionally, it will require funeral providers to foist unwanted price lists on many consumers who will not be using either outer burial containers or metal caskets. This results in consumers being overloaded with product and price information that has no relevance to their purchase decision.

Thirty-six years ago, when the Funeral Rule took effect and the cremation rate was 14%, the vast majority of funeral consumers purchased caskets and outer burial containers. The FTC provided in the Funeral Rule that both of these products would have their own price lists, that the presentation of those price lists would only be required if the consumer inquired about the product or price, and that the price list did not have to be given out for retention. In that thirty-six year timespan, there is no evidence that providing casket and outer burial container price information in this format has hindered comparison shopping or deprived consumers of the price information they needed.

Now, when the purchase level for caskets and outer burial containers has fallen dramatically and the majority of consumers neither want nor need a metal casket or an outer burial container, it is illogical to require that this information be given as soon as there is any discussion of funeral service, arrangements, or prices, and that it be given out for retention. Providing the information to all consumers when only a fraction of them need it would be costly, confusing and intrusive.

15. Price List Format:

- a. **Should funeral providers be required to provide their itemized price list information and disclosures in a standardized format? Why or why not? If so, how should a standardized format be developed and updated as the marketplace changes?**
- b. **Would a standardized format make it easier for consumers to review and compare itemized price list information from multiple providers? Why or why not?**
- c. **Would a uniform standardized format make it easier for funeral providers to prepare compliant itemized price lists, particularly small businesses? Why or why not?**
- d. **How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?**
- e. **If the Rule was modified to include a standardized format for some or all of the itemized price list information and disclosures, should use of such a form be a safe harbor for the Rule's price list requirements for a funeral provider? Why or why not?**

It is puzzling that the FTC is soliciting comments on the issue of a standardized general price list. During the first review of the Funeral Rule in 1989, this issue arose at the behest of AARP. At that time, AARP promoted the concept of standardized price list as a way to help consumers comparison shop and to improve consumers' ability to comprehend funeral offerings and prices.

In the Final Staff Report to the Federal Trade Commission issued during their first review of the Funeral Rule, the FTC Staff recommended against AARP's standardized price list proposal.⁸⁸ With regard to the issue of using a standardized price list to promote comparison shopping, the FTC Staff rejected that by pointing out the fact that the GPL was never intended for that purpose.⁸⁹ Moreover, the Staff noted that the specific itemization of up to 17 goods and services and the presentation of mandatory disclosures "already required a GPL that is relatively standardized."⁹⁰ The Staff also observed that thousands of funeral homes were already using existing standardized GPL formats made available by printing companies and funeral trade associations.

⁸⁸ See Final Staff Report to the Federal Trade Commission and Proposed Amended Funeral Rule, p. 170 (June, 1990).

⁸⁹ *Id.*

⁹⁰ *Id.*

On the issue of whether standardized price lists would aid consumers in understanding funeral offerings and prices on general price lists, AARP commissioned a Gallup poll of funeral consumers in anticipation of the first review of the Funeral Rule. The Gallup poll commissioned by AARP reported that 92% of funeral consumers surveyed “understood all of the terms on the price list used to describe the funeral service.”⁹¹ Diane Colasanto, the representative from the Gallup Organization who testified during the first Funeral Rule review, concluded that a 92% comprehension level of price lists, based upon her expert experience, represented a “high level of understanding.”⁹² Therefore, the only empirical evidence submitted on consumer understanding of price lists shows a very high comprehension level.⁹³

Beyond the fact that a standardized price list is not needed either to foster comparison shopping or to increase consumer comprehension, the fact is that it would be impossible to design a standardized price list without limiting funeral options and innovations.⁹⁴ In the thirty years since the first review of the Funeral Rule, the funeral marketplace has drastically changed. As noted in response to Question 16 below, when the first review of the Funeral Rule was occurring in 1990, the cremation rate nationwide was 17.1%; now it is 56.4%. In the State of Washington, the cremation rate is 80% while Mississippi has a 29% rate. There are four southern states with cremation rates below 40% while the three New England states of Vermont, New Hampshire and Maine have cremation rates above 75%. For funeral homes servicing predominantly cremation clientele, an effective GPL will have significantly different design and content than a GPL used by a funeral home with a 60% to 70% burial rate.

While the difference in burial versus cremation rates among states makes a standardized price list problematic, it does not begin to factor in the myriad of funeral customs, practices and traditions found in the many religions, ethnic groups, and cultures that comprise American society. Trying to force a funeral home serving the Muslim community in Detroit and a funeral home serving predominantly Baptist communities in Birmingham, Alabama to use the same GPL would be a disservice to all.

Even on a local level, a standardized price list would be unworkable. In Los Angeles, there may be a discount storefront funeral home selling direct cremations, immediate burials, and simple at-home ceremonies. It strongly markets to price-conscious shoppers not wanting to use a funeral home. So, its price lists uses alternative terminology emphasizing simplicity,

⁹¹ Colasanto, HX-66 at Tabulations Exhibit at 31, question 16.

⁹² Colasanto, Tr. Vol. III, 88.

⁹³ Ironically, the survey evidence showing the high comprehension level by consumers was submitted by AARP which was advocating for the standardized price lists on the basis that consumers had a difficult time understanding the lists. AARP's own survey evidence undermined its argument for standardized price lists.

⁹⁴ In its December 17, 1980 FTC Policy Statement on Unfairness, the Commission held that it must weigh against any proposed remedy the cost imposed “in the form of increased paperwork, increased regulatory burdens on the flow of information [and] reduced incentives to innovation.” All of these burdens would apply to the adoption of a standardized price list.

ecological-friendly options and low costs. Only a few blocks down the street, a large funeral home serving the Latino community offers spacious and impeccably furnished facilities with an experienced, professional staff that knows how to provide the elaborate services and receptions that are part of the Hispanic funeral customs.

While both of these businesses are funeral homes, their respective menus of services would be radically different. To handcuff them by compelling them to use the same standardized price list which is not tailored to the particular set of services and merchandise their clientele is seeking, frustrates both the consumer and the business. It discourages the funeral home from offering innovative services and frustrates consumers who are looking for information that pertains to the services they want. It is impossible to design a standardized price list that is going to provide the clientele of these two funeral homes with the information they are seeking.

Given the increase diversity of the American population and the explosion of funeral and disposition options, a standardized price list will harm consumer choice and stifle funeral home innovation. What was a misguided idea that the FTC Staff rightfully rejected thirty years ago when funeral service was generally homogeneous would be an absolute disaster in today's diverse, consumer-driven funeral marketplace.

16. Cremation and Cremation-Only Funeral Providers:

- a. What percentage of consumers are choosing cremation each year? What is the annual dollar volume of sales for cremation services? How has that changed in the last five years, in the last ten years, and since the Rule was enacted?
- b. Should funeral providers be required to include the cost, or the range of costs, of any crematory fees that will be charged by outside providers for cremation on their itemized price list? Why or why not?
- c. What percentage of funeral providers offer only cremation services without any burial options as a final disposition? What percentage of funeral arrangements do these providers account for?
- d. What, if any, modifications should be made in the Rule's itemized price list and disclosure requirements for funeral providers offering only cremation services as a final disposition? Why? How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(a) Based upon data collected from Statistica, the National Funeral Directors Association, the Cremation Association of North America and the Ibis World Industry Report on Funeral Homes in the United States, NFDA has put together the below chart to show the historic cremation level in the United States and the number of cremations that took place over the past 45 years. We also included projections provided by NFDA and Ibis for the years after 2017:

<u>Year</u>	<u>Cremation Percentage</u>	<u>Number of Cremations</u>
1975	5.7%	107,900
1980	9.7%	193,000
1985	13.9%	290,000
1990	17.1%	367,400
1995	21.1%	487,860
2000	26.7%	641,700
2005	32.3%	790,700
2010	40.4%	997,200
2015	47.9%	1,299,300
2017	51.7%	1,454,600
2020*	56.4%	

2025*	63.5%	
2030*	69.7%	
2035*	74.8%	
2040*	78.7%	

* Projections

The dramatic increase in the cremation rate from only 5.7% in 1975 to a projected level of 78.7% in 2040 shows that the U.S. death care market has changed dramatically. Most experts cite a number of factors behind the growing acceptance of cremation in the U.S. including, the dramatic decline of religious affiliations, the loosening of religious restrictions on cremation, ecological concerns, cost savings, and an increasingly transient society.

In this Question 16, the FTC also requested information regarding the annual dollar value for cremation services. It is not clear from that question whether the FTC is seeking information on the fees charged by the crematory for the cremation process, the average cost of direct cremation, or the average cost of a funeral followed by cremation. Below, NFDA has quoted the median price for each of those services using the figures from the 2019 NFDA Member General Price List Study:⁹⁵

Median Crematory Fee (Member – Owned and Third Party Crematory)	Median Price of Direct Cremation with Container Sold by Funeral Home	Median Price of Full Funeral Service Followed by Cremation
\$364.00	\$2,495.00	\$6,645.00

From the 2019 NFDA Member General Price List Study, it appears that 44.4% of cremations were direct cremations without any service or ceremony, 37% were cremations followed by memorial services, and 18.5% were full funerals followed by cremation.

(b) The FTC is asking whether funeral providers should be required to include the cost or range of crematory fees that are charged by outside providers for cremation on the funeral providers' general price lists. NFDA is opposed to such a requirement because it is not feasible.

According to the 2019 NFDA Member General Price List Study, over 70% of funeral homes use a third-party crematory to perform their cremations. The funeral homes do not control the prices charged by those third-party crematories. In some cases, funeral homes will use multiple crematories depending upon pricing, availability, and location. It is simply not

⁹⁵ The 2019 General Price List Survey was mailed to 5,316 NFDA member funeral homes on July 24, 2019 to gather prices from their GPLs and other related data. Of the potential respondents, 1,270 members anonymously completed the survey (643 mail and 384 online) which accurately represents NFDA's total membership with 95% confidence within a range of $\pm 2.8\%$. The data was reported out in the study at the minimum and maximum prices as well as the median price. The median price is the price where half of all prices of the items fall below and half are above.

feasible to compel funeral homes to constantly monitor prices charged by third-party crematories and to revise their general price lists whenever they learn of a price change.

Another complicating factor is that many crematories charge different fees depending upon the size of the body, the time frame for cremation, or attendance of the family to witness the cremation. It would not be feasible for funeral homes to track and report on their general price lists the different cremation fees that crematories may have for oversized bodies,⁹⁶ expedited cremations, cremations on weekends or holidays, or options such as family viewing.

(c) and (d) NFDA is not aware of the percentage of funeral providers that offer only cremation services to the public without offering funeral or burial services. Obviously, with the cremation level now exceeding more than 50%, there is a growing segment of businesses that have changed their options to market directly to the cremation consumer. In many cases, these businesses may be owned by funeral homes that have created different operations to market directly to the cremation customer who may not wish to use a funeral home.

With regard to whether modifications need to be made to the Funeral Rule's itemized price list and disclosure requirements for these operations that offer only cremation, NFDA believes that a few minor modifications to the Funeral Rule would allow these operations to create general price lists which cover only their cremation services. The Funeral Rule already specifies in Section 453.2(b)(4)(ii) that if a funeral provider does not offer for sale any of the itemized services that are specified in the Funeral Rule, the funeral home does not need to list them on the general price list. The Funeral Rule should be modified to also indicate in Section 453.2(4)(iii) the same option when listing caskets and outer burial containers. In other words, if the funeral provider did not sell caskets or outer burial containers it would not have to list a price range for those items, or print the mandatory disclosures regarding the availability of casket and outer burial container price lists. NFDA has added this language to the proposed Funeral Rule in Exhibit A.

With regard to the mandatory disclosures, Section 453.3(b)(2) specifies that the mandatory disclosure regarding alternative containers only has to be listed on the general price list if the funeral provider arranges direct cremation. This same type of proviso should be added to Section 453.3(a)(2)(ii) with regard to the mandatory disclosure that accompanies the embalming charge. If the funeral home does not provide embalming, the Funeral Rule should specify that the funeral provider is not required to list this mandatory disclosure on its GPL. Again, Exhibit A shows the Funeral Rule with this added language.

⁹⁶ There is no standard among crematories for charges for oversized bodies. Crematories will impose additional fees at different weights depending upon their facilities, manpower, and business judgement.

If the FTC made these minor tweaks to the wording of the Funeral Rule, a funeral provider that offers only cremation services should be able to design a general price list within the requirements of the Funeral Rule that lists only the cremation services it offers.

17. New Forms of Cremation and Other Processes for Disposition:

- a. What new forms of cremation and other processes for the disposition of human remains (such as chemical and organic reduction processes) are available in the U.S. market? What percentage of consumers are choosing these newer options? How has that changed in the last five years? How many providers offer these new types of disposition services and what is the annual dollar volume of sales?**
- b. What, if any, modifications should be made to the Rule in light of new and developing processes for human remains disposition? Why? Should the definition of "cremation" in the Rule be amended to reflect these new processes? Why or why not? How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?**
- c. What types of alternative containers, if any, are needed or required for cremation and non-burial types of dispositions?**
- d. Does the Rule's required disclosure regarding alternative containers need to be modified in light of new disposition options and the containers required? Why or why not?**

(a) In the past ten years, states have considered legalizing several new methods of dispositions for human remains. Two of the methods, alkaline hydrolysis and natural organic reduction, are not new forms of disposition since they have been used for many years in the veterinarian and agricultural industries for animal carcasses. However, after businesses developed new systems for using these methods on human remains as an alternative to burial or cremation, several states have looked at legalizing these methods.

Alkaline hydrolysis involves placing the remains in a metal cylinder which, through a combination of heat, pressure, and a mixture of water and potassium hydroxide, breaks down and dissolves the tissue. After anywhere from four hours to sixteen hours depending upon the size of the remains and the equipment used, the body is reduced to porous white bone remains and liquid. The liquid is disposed of through sanitary sewer systems and the calcium remains are pulverized and provided back to the family in a similar fashion to cremated remains.

Alkaline hydrolysis, which is also marketed as bio cremation or water cremation, has been legalized by 19 states. Although a few states have simply amended their cremation laws and regulations to include this process, most states that have legalized it have treated it as a separate form of disposition subject to its own regulations.

Another new form of disposition is natural organic reduction. This has been legalized only in the State of Washington. This involves placing human remains in large cylinders and covering the remains with organic materials such as straw, wood chips, and soil. By maintaining the mixture with sufficient water and aeration, natural decomposition is substantially sped up and the remains are reduced to approximately a cubic yard of soil in the course of several weeks. The soil will be offered back to the family to use or to donate to land reclamation programs. Although no company is currently offering natural organic reduction as a form of disposition, a company named Recompose is building a facility in Seattle, Washington in hopes to offer the form of disposition for human remains in the summer of 2021.

A third form of human disposition, which has not yet been legalized in any state, is known as promession. It involves the freezing of the body by liquid nitrogen which removes all of the liquid from the remains. That process leaves the remains in a very brittle state which are then shaken by equipment which vibrates it into a fine powder. The powder is then presented back to the family or used as a fertilizer. Promession was only recently patented by a Swedish company and has not yet been introduced into the United States.

Of the new disposition methods for human remains, alkaline hydrolysis is the only one in current use. However, even though it has been legalized by 19 states, it is still generally unavailable in most areas. Although NFDA does not have exact figures, it appears from discussions with equipment manufacturers that about 20 to 25 funeral homes in the U.S. now offer alkaline hydrolysis.

Typically, alkaline hydrolysis is touted as an ecofriendly form of disposition having a substantially lower carbon footprint than cremation or burial. Because of the cost of the equipment, it is generally priced above cremation and primarily selected by consumers for ecological reasons. NFDA contacted a trade service that offers both cremation and alkaline hydrolysis in Minnesota. The trade service charges \$295 for a cremation and \$495 for alkaline hydrolysis.

(b) NFDA does not believe that any modifications need to be made to the Funeral Rule to cover these new methods of disposition. Funeral homes that offer these forms of disposition have made a substantial investment in equipment and will promote these services to consumers by placing information, including prices, on the general price list. Given that these new methods of disposition are not available in the vast majority of the country, NFDA does not believe that there is any need to alter the Rule to address these new disposition methods.

The FTC also asked whether the definition of cremation in the Rule needs to be amended to reflect these new processes. NFDA believes it would be inaccurate to expand the definition of "cremation" to encompass alkaline hydrolysis or natural organic reduction. These disposition methods are entirely different processes than cremation and involve specialized equipment, licensing, and expertise.

(c) The FTC has also asked what type of alternative containers are needed or required for these new forms of disposition. Actually, no alternative containers are used in the disposition of human remains with either alkaline hydrolysis or natural organic reduction. In both cases, the remains would be dressed in a biodegradable fabric which would be broken down in the disposition process. NFDA confirmed with a trade service that offers alkaline hydrolysis in the state of Minnesota that the body is placed in a special biodegradable bag that dissolves during the process leaving only the zipper. The trade service charges \$20 for the biodegradable bag.

(d) The FTC also asked whether the mandatory disclosure regarding alternative containers needed to be modified in view of the new disposition methods. NFDA does not believe that is required since alternative containers are only applicable to cremation and are not used with either alkaline hydrolysis or natural organic reduction.

18. *Non-Declinable Basic Services Fee*: Should the Rule permit a non-declinable basic services fee? Why or why not? Provide any evidence that supports your position.

The Funeral Rule is designed to permit funeral homes to have one non-declinable fee.⁹⁷ The Commission recognized during the original rulemaking that regardless of the combination of goods and services a consumer selects, the very process of selection itself will involve use of the funeral provider's services.⁹⁸ Therefore, the FTC crafted the non-declinable basic service fee. However, to protect the consumer against being compelled to purchase unwanted items, the FTC has allowed only the basic service fee to be non-declinable; all other items may be declined by the consumer.

The FTC Staff has recognized that the non-declinable basic service fee strikes a balance between allowing a funeral home to recover overhead costs and assuring consumers unfettered discretion in their purchase decisions.⁹⁹ Indeed, it was primarily on the basis of the funeral home's right to use the non-declinable basic service fee to recover overhead costs that the FTC concluded the consumers should have the right to use third party merchandise without paying an additional fee.¹⁰⁰

From a practical standpoint, it is virtually impossible to eliminate the non-declinable nature of the basic service fee. As the Commission acknowledged, as soon as the consumer selects any combination of goods and services, they are using the basic services of the funeral director and staff. How could a consumer select goods and services and still be able to "decline" the basic services of the funeral director?

For many years, NFDA urged the Commission to permit a basic facilities charge to enable funeral homes to recover overhead. The FTC has always refused to sanction that fee and has instead urged funeral homes to place their overhead charges in the basic service fee. The funeral profession has followed this directive and allocated its pricing structure accordingly. To now permit consumers to "decline" payment of overhead would turn the design of the Funeral Rule on its head.

In the years that the Funeral Rule has been in place, some consumer interest groups have voiced opposition to the non-declinable nature of the basic service fee and urged the Commission to eliminate it. Oftentimes, as proponents of simpler low-cost funerals and/or dispositions, these organizations complain that it is unfair for consumers opting for simpler services to pay the same non-declinable basic service fees as families opting for a traditional funeral service.

⁹⁷ Statement of Basis and Purpose, 59 Fed. Reg. at 1605 (January 11, 1994).

⁹⁸ Statement of Basis and Purpose, 47 Fed. Reg. 42260, 42282 (September 24, 1982).

⁹⁹ May 28, 1991 Final Staff Recommendations at 15.

¹⁰⁰ Statement of Basis and Purpose, 59 Fed. Reg. at 1605 (January 11, 1994); June, 1990 Final Staff Report at 131 & 168.

As NFDA explains in its response to Question 19 below, the solution is not to eliminate the non-declinable nature of the basic service fee; rather, it is to allow funeral homes to vary the amount of the basic service fee depending upon the type of service which is provided. Permitting a variable basic service fee will allow lower costs for simpler services, free funeral homes to offer innovative options and more choice for consumers, and maintain the basic price structure that the FTC designed when it developed the Funeral Rule.

19. Reduced Basic Services Fee for Direct Cremation and Immediate Burial:

- a. The Rule defines direct cremation as “a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.” Should the Rule be modified to expressly permit the addition of other goods or services for consumers choosing direct cremation or other newer forms of human remains disposition without requiring payment of the full basic services fee? For example, should the Rule permit a funeral provider to charge a reduced basic services fee for a family choosing to have a loved one cremated but also wishing to have a limited viewing or visitation prior to or after the cremation?**
- b. If changes should be made to the Rule to permit the addition of some goods or services to the direct cremation or newer forms of human remains disposition arrangements without requiring the funeral provider charge the full basic services fee, what additional goods or services should be included? Why?**
- c. If changes should be made to the Rule to permit the addition of some goods or services to the direct cremation or newer forms of human remains disposition arrangements without requiring the funeral provider to charge the full basic services fee, should such a change also be made to permit limited additional goods or services to immediate burial arrangements? Why or why not?**
- d. How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?**

(a) NFDA fully supports modifying the Funeral Rule to allow funeral homes the ability to vary the amount of the basic service fee depending upon the complexity and size of the funeral that the consumer requests. NFDA has pointed out to the FTC Staff in previous filings and correspondence that the FTC’s requirement that the full basic service fee must be charged when the consumer wishes to add any type of service to a direct disposition unfairly penalizes consumers and quashes innovative offerings by funeral homes. This is especially true for low-cost providers who wish to offer direct disposition consumers the opportunity to hold small gatherings or simple ceremonies for a minimal fee. Because the FTC requires the funeral home to charge its full non-declinable basic service fee whenever a family adds any type of service to a direct disposition, it compels a family to either pay significantly more or forego the desired service.

(b) and (c) While the problem posed by a static basic service fee often arises with direct cremation, there is no reason for the FTC to restrict a funeral home's option to vary the basic service fee only when it is dealing with direct cremation consumers. It would be illogical and unfair for the Funeral Rule to permit a direct cremation consumer to add a visitation or private family gathering without having to pay the full basic service fee, but to require a consumer who purchases an immediate burial, forwarding of remains or receiving of remains (collectively, the "Alternative Services") to pay the full basic service fee. For that matter, it would be equally unfair and unreasonable to allow a consumer of the four Alternative Services to add ceremonies without paying the full basic service fee while requiring purchasers of other simpler services such as body donation, home funerals, or green funerals to pay the entire basic service fee.

The problem with trying to limit the funeral home's discretion in reducing the basic service fee for simpler services is that any limitation or artificial classification is going to penalize consumers and restrict their choice. For example, a funeral home should be able to offer a lower basic service fee for a private family funeral with no visitation because there will be substantially less time spent by funeral home personnel in planning and arranging that private service than a funeral that involved a visitation and public funeral. Although the consumer in this case is not purchasing one of the four Alternative Services, the consumer is still purchasing a simpler service that requires less manpower to plan and coordinate. Why is this consumer penalized by being required to pay the full basic service fee when a purchaser of one of the Alternative Service is not?

(d) The Funeral Rule was designed over forty years ago for a funeral market that no longer exists. Back in the late 1970's, it was the norm that consumers selected a traditional funeral with visitation, casket, a funeral with clergy presiding, and burial. So when the FTC Staff decreed that the same basic service fee would apply to all funerals, it made sense since pretty much all funerals consisted of the same services.

That has all changed. With the cremation rate over 50%, families less involved with religions, a more transient society, multiple memorialization options available, and competition for memorial services from hotels, event centers and restaurants, the old static basic service fee no longer works for the consumer or the funeral home.

A funeral home in today's market must offer a variety of limited service options in order to be successful. A family may want the funeral home to remove the remains, embalm them, obtain necessary permits, arrange for burial in the cemetery, and then turn the body over to the family who will conduct their own funeral and service at the cemetery. In this case, the funeral home should have the option to charge a lower basic service fee. Certainly, the consumer would expect a lower fee since the family, not the funeral home, is arranging the funeral service.

The funeral and memorialization market is changing at a rapid pace and funeral homes need the flexibility to tailor the basic service fee to the type of service they are providing. In this regard, NFDA would propose that Section 453.2(b)(4)(iii)(C)(1) of the Funeral Rule be modified to read as follows:

“The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price, ~~and, if the charge cannot be declined by the purchaser,~~ The funeral provider may provide on the general price list more than one price for the basic services of funeral director and staff as long as the funeral provider identifies on the general price list those principal basic services being provided for each of the quoted prices. If the basic services charge cannot be declined by the purchaser, the funeral provider must include the statement: “This ~~A~~ fee for our basic services will be added to the total cost of the funeral arrangements you select. (This basic service fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)”. If the charge cannot be declined by the purchaser, the quoted price or prices shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase “and overhead” after the word “services”; or” [New wording underscored].

20. Mandatory Disclosures:

- a. Do the existing mandatory disclosures in the Rule convey to consumers an accurate understanding of their choices? Should any of the mandatory disclosures be modified to improve clarity? Why or why not?
- b. The current embalming disclosure begins with a caveat: "Except in certain special cases, embalming is not required by law." The Rule provides that this italicized language "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." Should the Rule be changed to prohibit the inclusion of the "certain special cases" caveat in locations where the state or local law does not require embalming? Why or why not?

NFDA believes that two of the mandatory disclosures on the General Price List and the mandatory disclosure on the Outer Burial Container Price List should be revised to provide more accurate information to consumers. Below, NFDA provides suggested revisions for these three mandatory disclosures.

(a) Basic Service Fee. In its response to Question 19 above, NFDA advocated for the FTC to allow a variable basic service fee so that consumers who select simpler funerals or direct disposition funerals may select service options without having to pay the full basic service fee. If the Funeral Rule is modified to allow a variable basic service fee, the mandatory disclosure in Section 453.2(b)(4)(iii)(C)(1) should be revised. NFDA's suggested language is as follows:

"~~This A~~ fee for our basic services will be added to the total cost of the funeral arrangements you select. (This basic service fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving of remains.)"

(b) Embalming Disclosure. As noted above in section (b) of Question 20, the first sentence of the mandatory disclosure regarding embalming provides as follows:

"Except in certain special cases, embalming is not required by law."

This first sentence is misleading in that it implies to the consumer that embalming is rarely required by law. This is not the case. Below is a chart showing that 37 of the 50 states require that deceased human remains either be embalmed or refrigerated within a certain time span after death that ranges from 24 hours (twenty-one states) to 72 hours (one state).

EMBALMING / REFRIGERATION REQUIREMENTS*

24 HR	30 HR	36 HR	48 HR	50 HR	72 HR
AR	HA	WY	AL	MA	MN
AZ	LA		IA		
CA			MD		
CO			MI		
DE			MS		
FL			MT		
ID			NJ		
KA			ND		
MO			OH		
NE			RI		
NV			VA		
NH					
NM					
NC					
OK					
OR					
PA					
SD					
TX					
UT					
WA					
21	2	1	11	1	1

*Updated as of July 1, 2019

As the above chart indicates, over two-thirds of the states require that a body be embalmed or refrigerated within a certain time frame following death. Since 46% of funeral homes do not have refrigeration facilities,¹⁰¹ in many cases a body will have to be embalmed under state law if a disposition cannot be carried out prior to the deadline mandated by state law.

NFDA believes it will be beneficial for consumers to understand what are the requirements of their applicable state law. Therefore, NFDA recommends that the mandatory disclosure on embalming provided for in Section 453.3(a)(2)(ii) be modified to state as follows:

¹⁰¹ The 2019 NFDA Member General Price List Study showed that 54% of funeral homes have refrigeration available. However, even if the funeral home has refrigeration units, occasionally the unit or units will be in use, making refrigeration unavailable for other remains.

“(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 as may be noted below, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with 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” as may be noted below need shall 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. If state law does require embalming in some circumstances, the funeral provider may explain the state law requirements for embalming following this disclosure. This disclosure only has to be placed on the general price list if the funeral provider offers embalming.”

Instead of misleading the consumer into assuming that embalming is rarely required by law, the modified disclosure informs consumers in the 37 states where embalming or refrigeration is required after a certain time period, that it may be required. It then provides the funeral home the opportunity to explain the requirements of state law at the end of the mandatory disclosure. And, in the 13 states where embalming is not required by law under any circumstances, this is plainly explained to the consumer.

(c) Mandatory Disclosure for Outer Burial Container Price List. Section 453.3(c)(2) of the Funeral Rule provides the wording for the mandatory disclosure which must appear on the Outer Burial Container Price List. The first sentence of that mandatory disclosure provides as follows:

“In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave.”

NFDA would recommend that the first six words of that mandatory disclosure be deleted since it is unaware of any state or local law that requires the purchase of an outer burial container. To inform a consumer that in most areas of the country, state or local law does not require the purchase of a container, suggests that in some areas state or local law does require the purchase of an outer burial container. Since that is not the case, the first six words are misleading, and should be eliminated.

21. Funeral Rule Offender Program: What impact, if any, has the FTC's policy of referring first-time violators to the National Funeral Directors Association's Funeral Rule Offenders Program (FROP) for compliance review and training had on compliance with the Rule? Would publication of some or all of the names of those funeral providers participating in the FROP program increase compliance with the Rule? Would such publication benefit in other ways consumers shopping for funeral services? Why or why not?

It is doubtful that there is any direct corollary between the existence of the FROP Program and the overall compliance of funeral providers with the Funeral Rule. FROP was not developed nor ever intended to be a means to improve overall compliance. To the extent that the FROP Program is known in the funeral profession, it does serve as a reminder of the importance of complying with the Funeral Rule.

The FROP Program was jointly developed by the FTC and NFDA over 25 years ago as an alternative to traditional enforcement sanctions. While funeral homes cited by the FTC as a result of the undercover shopping program may contest those charges or settle with the FTC through the Department of Justice, the FROP Program is an alternate avenue that stresses education. Participants in the FROP Program conduct in-house staff training with Funeral Rule compliance materials, attend annual teleconference seminars conducted by NFDA's General Counsel and the FTC Funeral Rule Coordinator, have the funeral home's price lists periodically reviewed for compliance with the Funeral Rule, and must successfully pass a Funeral Rule certification examination to graduate from the three-year FROP Program.

The vast majority of funeral homes in the FROP Program did not intentionally violate the Funeral Rule. In nearly every case, it was simply a case of employee carelessness or confusion. The funeral home had the required price lists, but an employee meeting with the undercover shopper failed to hand out the price list in a timely fashion. And, as detailed in responses to questions 3 and 5, a number of the violations may be a result of either the undercover shopper or the funeral director simply misunderstanding when a "discussion" actually triggers the requirement to hand out the price lists.

Currently, there are 42 funeral homes in the FROP Program. Since it is a three-year program, that means on average 13 to 15 funeral homes enter the Program each year. Of the several hundreds of funeral homes that have graduated from the Program over its 25 year history, NFDA has a record of only three of them subsequently being cited by the FTC for additional Funeral Rule violations. Obviously, the educational component of the FROP Program works very well.

When the FTC and NFDA jointly developed the FROP Program, the FTC agreed that it would not publish the names of the funeral homes in the Program because the point of the Program was education, not punishment. Nevertheless, in the first few years of the Program,

the FTC received several Freedom of Information Act (FOIA) requests which required it to identify the funeral homes in the Program. Typically, those names were published in a few funeral industry trade magazines and occasionally by a newspaper in the funeral home's local area. Although the FTC readily provided the names of the funeral home participants in FROP in response to those FOIA requests, the interest in making such requests quickly dissipated. To NFDA's knowledge, no one has made an FOIA request to the FTC for the names of the participants in the FROP Program in the past 15 years.

There is no evidence to support a claim that publicizing the name of funeral homes in the FROP Program would increase compliance or be of interest to consumers. As noted above, the funeral homes in the FROP Program did not intentionally violate the Funeral Rule. And, if the FTC suspects that a funeral home did intentionally violate the Funeral Rule, it has the discretion to decline to offer that funeral home the option to join FROP.

NFDA believes that if the FTC chooses to modify its longstanding agreement on how FROP is to operate by publicly disclosing the names of the funeral homes joining the Program, it will have no impact on overall funeral home compliance with the Funeral Rule nor consumer selection of funeral homes. It could, however, eliminate one of the major reasons for funeral homes to participate in FROP and lead to the end of the Program.

22. Cemeteries:

- a. Should the Commission broaden the Rule to apply to cemeteries? Why or why not? Identify any specific practices by cemeteries, such as failing to provide itemized price information or making any misrepresentations to consumers, that an extension of the Rule could address to protect consumers. Provide any evidence that demonstrates whether such practices cause consumer injury and quantify or estimate that injury if possible. Are any such practices prevalent? If so, provide any evidence, such as empirical data, studies, or reports, which demonstrates the extent of such practices.**
- b. What percentage of cemeteries are for-profit and therefore would fall within the FTC's jurisdiction? What, if any, concerns would arise if the Commission extended the Rule to for-profit cemeteries, but not non-profit cemeteries? What would the costs and benefits be to consumers and cemetery providers if the Commission extended the Rule to cemeteries? Provide evidence to support your conclusions.**

More than twenty years ago, the FTC commenced the second regulatory review of the Funeral Rule. At that time, the FTC asked whether the definition of "funeral provider" should be expanded to cover all sellers of funeral goods and services, such as cemeteries.

In its comments that were filed in August, 1999, NFDA strongly advocated that the FTC expand the definition of funeral provider to cover all sellers of funeral goods and services. To support its position, NFDA included its Membership Survey that it had completed in 1999. That survey was received by 6,600 funeral homes across the country and 3,436 of those businesses responded. The results were compiled and included with NFDA's comments. The response rate of 52.1% provided an excellent representation of the funeral market across the United States.

Of the 3,436 responses NFDA received, 49.6% of the funeral homes reported that cemeteries in their areas required consumers to purchase goods and services only from the cemetery. Typically, these mandatory purchase practices arose with the sales of outer burial containers, urn vaults, monument and marker purchases and installations, and opening and closing fees. The Membership Study also reported that over 30% of the cemeteries imposed a fee whenever a consumer had chosen to purchase goods or services from a third party.

Despite the survey evidence submitted by NFDA which showed the third party fees and tying arrangements imposed by many cemeteries, the Commission decided not to initiate a rule amendment proceeding to expand the coverage of the Rule to include cemeteries. In claiming that there was insufficient evidence that commercial cemeteries are engaged in

widespread practices that injure consumers, the FTC did not even reference NFDA's Membership Survey, much less refute it.

Having gone down the road of providing reliable, survey-backed data showing cemetery handling charges and tying arrangements to the Commission in 1999, only to be ignored, NFDA's sees no purpose in repeating the process. Moreover, the FTC has time and again declared that it is unable to regulate cemeteries because some cemeteries are not-for-profit and the FTC has no jurisdiction over their activities. Since nothing has changed in that respect, it is unclear why the FTC would reverse course and now decide to regulate cemeteries.

In correspondence leading up to the current review of the Funeral Rule, NFDA requested that the FTC re-examine the total ban on casket handling fees. When the casket handling fee ban was originally put into place in 1994, the FTC argued that there were no additional costs to a funeral home in handling third party merchandise.¹⁰² It later changed course and did acknowledge that there are costs.¹⁰³ In fact, as far back as 1991, three years before the Commission banned casket handling fees, FTC Economist Peter Vander Nat cited in his August 26, 1991 Report to the Commission that the estimated cost to a funeral home in handling third party merchandise would be \$40 to \$50 in each instance.¹⁰⁴

There are undoubtedly labor costs directly associated with funeral homes receipt of third party caskets. The funeral home needs to contact and coordinate with the third party shipper so that the casket is delivered where and when needed. The funeral director needs to be present at the funeral home to meet the shipper, accept and sign for the delivery, and wait for the casket to be unloaded and uncrated. The funeral director then would assist the shipper in moving the casket to the funeral home facility. While the FTC Staff did issue an Advisory Opinion letter that relieved funeral homes of the obligation to unload and uncrate caskets, and to dispose of packing material¹⁰⁵, the fact is that funeral homes must do these tasks without compensation if the shipper refuses to do so. Currently, there is no specific fee that a funeral home may charge a family for providing the services of coordinating the delivery of the third party casket, receiving third party caskets and, in some cases, unloading and uncrating the casket and/or disposing of third party casket packing materials.

There is no reason for prohibiting a funeral provider from charging a fee for actual services that it is providing to a family that is using a third party casket. There are state laws and federal court cases that have recognized that cemeteries that provide services in connection with third party merchandise have the right to charge the consumer for their actual services in doing so. For example, the State of Ohio has a statute that restricts cemeteries

¹⁰² 59 Fed. Reg. 1592, 1605 (January 11, 1994).

¹⁰³ 73 Fed. Reg. 13740, 13747 (March 14, 2008).

¹⁰⁴ August 26, 1991 Report of Peter Vander Nat to Commission, p. 28 n. 33. Converting Vander Nat's estimates to today's dollars, the estimated cost to the funeral home in handling a piece of third party merchandise would now be in the \$76-\$95 range.

¹⁰⁵ FTC Staff Advisory Opinion 10-1 (April 19, 2010).

from imposing fees on third party burial vaults but does allow the cemetery to charge the family for their actual costs in assisting with the insulation of the third party burial vault. In that regard, Section 1721.20 of the Ohio Revised Code provides as follows:

“No person, partnership, association, or corporation or officers, agents or employees thereof, shall directly or indirectly make or collect any charge pertaining to the delivery or installation of a burial receptacle in a cemetery for human remains, except when such charge is for service actually performed, or expense actually incurred in aid of said installation.”

In *Rosebrough Monument Company v. Memorial Park Cemetery Association*, 736 F2d 441 (8th Cir. 1984), the federal courts found that a cemetery was unlawfully tying the purchase of cemetery lots and monument installation charges in an effort to monopolize the latter sales. Through a series of trials and appeals, the courts approved injunctive relief against the tying practices of the cemetery in order to open up competition in monument installation. However, in fashioning the injunctive relief, the Eighth Circuit Court of Appeals specifically modified the injunction to allow the cemetery to “charge a fee based on its actual labor costs” to inspect installed monuments.

The FTC Staff has voiced concerns in the past that it may be too difficult for it to determine the reasonableness of third party merchandise servicing fees charged by funeral homes. However, the statutory and case law debunked those concerns. Moreover, the FTC has already done a detailed and up-to-date analysis of funeral home staff costs for recordkeeping and administrative tasks.¹⁰⁶ Knowing the labor costs of funeral home management, funeral directors, and administrative staff, it would not be difficult for the FTC to successfully challenge any third party casket service fees which it calculated exceeded the funeral home’s actual costs in coordinating the receiving of the third party casket.

The mission of the FTC is to protect consumers against unfair and deceptive acts and practices. Nothing can be more fair and straightforward than having families who use third party caskets pay the funeral home’s actual cost in coordinating the delivery and receipt of those third party caskets. Shifting that cost onto families that do not use third party merchandise by dictating that funeral homes place those costs in the non-declinable basic service fee paid by all consumers is misleading and unfair.

¹⁰⁶ FTC Requests for Comments under the Paperwork Reduction Act for Information Collection Requirements contained in the Funeral Industry Practice Rule (February 24, 2020).

III. CONCLUSION

"If you don't know where you've come from, you don't know where you're going."¹⁰⁷

NFDA's Comments took a hard and critical look at the legal and economic underpinnings of the Funeral Rule. Our purpose in doing so was not to advocate that the Rule be repealed. NFDA supports the Funeral Rule's requirements that consumers receive price information when they request it and before they select funeral goods and services. Although regulation by states would be preferable since it would unify regulation under one government entity and would allow regulation to be better tailored to funeral markets, in the absence of the FTC using its authority to grant states exemptions under the Funeral Rule, NFDA supports retention of the Rule with the modifications contained in Exhibit A.

NFDA's purpose in detailing the failures of the Rule's essential premises and promises is to forestall any further attempts to convert the Funeral Rule into something it can never be. The Rule has not been, and never will be, the force that can convince funeral consumers to use price as the primary reason to select a funeral home. Only funeral consumers can change the dynamic of demand in the funeral market.¹⁰⁸

That being the case, the Commission should not double down on the failure of the Rule by mandating the posting of funeral home price lists on their websites. More price information is not going to make funeral consumers more price conscious; thirty-six years of the Funeral Rule has proven that.

The National Funeral Directors Association thanks the FTC for this opportunity to comment on the Funeral Rule and would welcome being part of a review process to bring much needed modifications and updates to the Rule.

Respectfully submitted,

June 12, 2020

By: 

T. Scott Gilligan, Esq.
NFDA General Counsel

¹⁰⁷ Maya Angelou

¹⁰⁸ No better evidence of this can be found than the dramatic increase in cremation in the United States. The cremation level has gone from 14% when the Funeral Rule took effect to 56% at present. This change in the funeral market has been driven entirely by the consumer.

PART 453—FUNERAL INDUSTRY PRACTICES

§ 453.1 Definitions.

(a) *Alternative container.* An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) *Casket.* A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) *Commission.* "Commission" refers to the Federal Trade Commission.

(e) *Cremation.* "Cremation" is a heating process which incinerates human remains.

(f) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

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

(h) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) *Funeral services.* "Funeral services" are any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) *Immediate burial.* 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.~~

Proposed
Change #1

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

(m) *Funeral ceremony.* A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) *Outer burial container.* An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) *Person.* A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) *Practical necessity.* A good or service is a "practical necessity" if, in the absence of such good or service, it would be impossible, impractical, or excessively burdensome for the funeral provider to provide the funeral or disposition services.

Proposed
Change #2

~~(p)(g)~~ *Services of funeral director and staff.* The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a

funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price disclosures.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosure.* Tell persons who ask by telephone during the funeral provider's regular business hours about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

Proposed
Change #3

(2) *Casket price list.* (i) Give a printed or typewritten price list to ~~people~~:

(A) Any person who inquires in person requests price information about the offerings or prices of caskets or alternative containers. The in person from the funeral provider must offer; or

(B) Any person who selects a casket or alternative container from the funeral provider in person. In this latter case, the casket price list upon beginning discussion of, but in any event before showing caskets, must be given prior to the person's selection of the casket or alternative container from the funeral provider.

Proposed
Change #4

(ii) The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, computer programs, or charts may be used if they contain the same information

Proposed
Change #5

as would the printed or typewritten list, and display it in a clear and conspicuous manner.

Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(iii) ~~(iii)~~ Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to ~~persons~~:

(A) Any person who inquires in person request price information about outer burial container offerings or prices. The containers in person from the funeral provider; or

(B) Any person who selects an outer burial container from the funeral provider in person. In this latter case, the outer burial container price list must offer the list upon beginning discussion be given prior to the person's selection of, but in any event before showing the containers, the outer burial container from the funeral provider.

Proposed
Change #4

(ii) The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, computer programs, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral

Proposed
Change #5

providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(iii) ~~(ii)~~ Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) ~~General price list. (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following~~ (i)(A) Give a general price list for retention to:

Proposed
Change #6

(1) ~~The prices of funeral goods or funeral services;~~

(2) ~~The overall type of funeral service or disposition; or~~

(3) ~~Specific funeral goods or funeral services offered by the funeral provider.~~

(1) Any person who requests price information about funeral goods or funeral services from the funeral provider when such request is not made in-person. In response to the request for price information, the funeral provider may provide the general price list to the person requesting price information by personal delivery, U.S. mail, electronic mail, telefax, or by having posted on its Internet Web site homepage the words "price information" or a similar phrase that include the word "price", with a link that leads to the funeral provider's general price list.

(2) Any person who inquires in person about the prices of funeral goods and services from the funeral provider. The general price list given to the person making the inquiry shall be printed or typewritten.

(3) Any person who selects funeral goods or services from the funeral provider in person. In this latter case, the general price list must be given prior to the person's selection of funeral goods or funeral services from the funeral provider. If a funeral provider sells funeral goods or services over its Internet Web site, it shall post on its Internet Web site home page the words "price information" or a similar phrase that include the word "price", with a link that leads to the funeral provider's general price list.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the ~~discussion request~~ for price information or the selection of funeral goods or funeral services takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other ~~discussion during that time about prices or the selection of funeral goods or services from the funeral provider~~ triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(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) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) ~~The price range for the Two direct cremations~~ cremation options offered by the funeral provider, together with that include:

Proposed
Change #7

(1) A separate price for a direct cremation where the purchaser provides the container;
(2) ~~Separate prices~~ A separate price for each a direct cremation ~~offered including an~~ with the funeral provider's least expensive alternative container; and

(3) A description of the services and container (where applicable), included in each price;
(D) ~~The price range for the Two immediate burials~~ burial options offered by the funeral provider, together with that include:

Proposed
Change #7

(1) A separate price for an immediate burial where the purchaser provides the casket;
(2) ~~Separate prices~~ A separate price for each an immediate burial ~~offered including a~~ with the funeral provider's least expensive casket ~~or alternative container~~; and

(3) A description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

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

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

Proposed
Change #8

(A) Either of the following if caskets are offered for sale by the funeral provider:

(1) The price ~~range for~~ of the caskets least expensive casket offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

Proposed
Change #8

(B) Either of the following if outer burial containers are offered for sale by the funeral provider:

(1) The price ~~range for~~ of the least expensive outer burial containers container offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price ~~and, if~~. The funeral provider may provide on the general price list more than one price for the basic services of funeral director and staff as long as the funeral provider identifies on the general price list those principal basic services being provided for each of the quoted prices. If the basic services charge cannot be declined by the purchaser, the funeral provider must include the statement: "This A fee for our basic services will be added to the total cost of the funeral arrangements you select. (This basic service fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price or prices shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services";

Proposed
Change #9

(2) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall

include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee or fees permitted by §453.2(b)(4)(iii)(C)(1) or (C)(2) is are the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) *Statement of funeral goods and services selected.* (i) 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. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations.

(a) *Embalming provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

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

(A) Direct cremation;

(B) Immediate burial; or

(C) A closed casket funeral without 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 as may be noted below, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with 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 as may be noted below" shall 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. If state law does require embalming in some circumstances, the funeral provider may explain the state law requirements for embalming following

Proposed
Change #10

this disclosure. This disclosure only has to be placed on the general price list if embalming is offered for sale by the funeral provider.

(b) *Casket for cremation provisions - (1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

- (i) Represent that state or local law requires a casket for direct cremations;
- (ii) Represent that a casket is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering. The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions— (1) Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

- (i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;
- (ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: ~~"In most areas of the country, state or local State law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."~~ The phrase ~~"in most areas of the country"~~ need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

Proposed
Change #11

(d) *General provisions on legal and cemetery requirements—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

- (1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;
- (2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

- (i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, ~~or receives and retains a rebate, commission or trade or volume discount upon~~ a cash advance item.

Proposed
Change #12

§ 453.4 Required purchase of funeral goods or funeral services.

(a) *Casket for cremation provisions—(1) Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) *Preventive requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services—(1) Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; ~~and~~ (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2-); and (4) services actually performed or expenses actually incurred by the funeral provider in accepting delivery of merchandise provided by third parties.

Proposed
Change #13

(2) *Preventive requirements.* (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4) (ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by requiring the purchase of a good or service that is a practical necessity or by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

Proposed
Change #2

§ 453.5 Services provided without prior approval.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 and 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 through 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)–(4), any statement or information that alters or contradicts the information required by this part to be included in those lists.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

NFDA Family Satisfaction Survey 2019 Annual Results

National Average	
# Responses=2,831	
Attention to detail	9.82
Courtesy of funeral home staff	9.90
Value of services you received	9.82
Overall, how would you rate this funeral home?	9.85
<i>Key: Average score using 10-point scale where 10=Excellent and 1=Poor</i>	
Full funeral service with burial	50.0%
Full funeral service with cremation	12.0%
Memorial service with burial	9.0%
Memorial service with cremation	17.3%
Direct cremation (no funeral or memorial service)	10.2%
Immediate burial (no funeral or memorial service)	1.5%
Green funeral with burial or cremation	0.4%
Place of worship	44.2%
Funeral home	44.7%
Cemetery	16.8%
Reception center	1.2%
Crematory	2.0%
Did you have a funeral or memorial service?	
Yes	46.7%
No	53.3%
Did you prearrange your funeral or memorial service?	
Yes	2.0%
No	98.0%
How did you select this funeral home?	
Previously served my family	57.9%
Reputation	36.2%
Location	29.6%
Attended non-family funeral in past	28.7%
Personal recommendation	19.9%
Facilities	17.1%
Prepaid funeral with firm	15.9%
Prearranged with firm	15.0%
Cost	4.7%
Advertising	2.2%

NFDA Family Satisfaction Survey 2019 Annual Results

	National Average
Funeral home website	38.3%
Church Bulletin	19.1%
Direct Mail	8.5%
Radio	6.4%
Television	19.1%
Yellow pages	0.0%
Newspaper	23.4%
Funeral Home and Experience with this Home	
The funeral director who arranged the funeral or memorial service	9.85
Amount of time to plan and make purchasing decisions	9.79
Options presented for personalizing the funeral	9.82
Merchandise selection	9.81
Explanation of the funeral home's payment policies	9.77
Funeral director who directed the funeral	9.88
Appearance of your loved one	9.75
The cremation services	9.83
The cemetery experience	9.83
The staff's professionalism	9.89
The driver's politeness and appearance	9.99
Professional pallbearers' politeness/appearance	9.88
<i>Key: Average score using 10-point scale where 10=Excellent and 1=Poor</i>	
Cost of Services Provided	
Higher than expected	10.1%
As expected	82.8%
Lower than expected	7.1%
Cost of Merchandise	
Higher than expected	7.9%
As expected	86.9%
Lower than expected	5.2%
How likely would you be to recommend this funeral home to others?	
Very likely	97.2%
Somewhat likely	2.3%
Not very likely	0.3%
Not at all likely	0.2%
In the event you had to plan another funeral, how likely would you be to use this funeral home again?	
Very likely	95.6%
Somewhat likely	3.2%
Not very likely	0.7%
Not at all likely	0.5%

NFDA Family Satisfaction Survey 2018 Annual Results

National Average	
# Responses=3,381	
Attention to detail	9.82
Courtesy of funeral home staff	9.90
Value of services you received	9.78
Overall, how would you rate this funeral home?	9.90
<i>Key: Average score using 10-point scale where 10=Excellent and 1=Poor</i>	
Full funeral service with burial	51.9%
Full funeral service with cremation	10.6%
Memorial service with burial	7.7%
Memorial service with cremation	16.1%
Direct cremation (no funeral or memorial service)	12.6%
Immediate burial (no funeral or memorial service)	1.3%
Green funeral with burial or cremation	0.4%
Location of funeral ceremony	
Place of worship	43.5%
Funeral home	43.8%
Cemetery	17.1%
Reception center	0.9%
Crematory	2.1%
Was this the first time you used this funeral home?	
Yes	48.5%
No	51.5%
Did you use the internet to find this funeral home?	
Yes	2.2%
No	97.8%
Why did you select this firm?	
Previously served my family	57.6%
Reputation	37.5%
Location	28.5%
Attended non-family funeral in past	25.4%
Personal recommendation	20.0%
Facilities	16.8%
Prepaid funeral with firm	16.2%
Prearranged with firm	15.8%
Cost	4.6%
Advertising	2.0%

NFDA Family Satisfaction Survey 2018 Annual Results

	National Average
Funeral home website	33.3%
Church Bulletin	22.6%
Direct Mail	0.0%
Radio	12.3%
Television	15.8%
Yellow pages	1.8%
Newspaper	17.5%
The funeral director who arranged the funeral or memorial service	9.85
Amount of time to plan and make purchasing decisions	9.83
Options presented for personalizing the funeral	9.82
Merchandise selection	9.76
Explanation of the funeral home's payment policies	9.80
Funeral director who directed the funeral	9.87
Appearance of your loved one	9.75
The cremation services	9.81
The cemetery experience	9.78
The staff's professionalism	9.89
The driver's politeness and appearance	9.90
Professional pallbearers' politeness/appearance	9.90
Key: Average score using 10-point scale where 10=Excellent and 1=Poor	
Cost of Services Provided	
Higher than expected	11.5%
As expected	80.7%
Lower than expected	7.8%
Cost of Merchandise	
Higher than expected	8.8%
As expected	85.0%
Lower than expected	6.2%
How likely would you be to recommend this funeral home to others	
Very likely	96.9%
Somewhat likely	2.5%
Not very likely	0.3%
Not at all likely	0.3%
If the event you had to plan another funeral, how likely would you be to use this funeral home	
Very likely	95.4%
Somewhat likely	3.2%
Not very likely	0.7%
Not at all likely	0.7%

NFDA Family Satisfaction Survey 2017 Annual Results

National Average	
# Responses=3,194	
Attention to detail	9.79
Courtesy of funeral home staff	9.94
Value of services you received	9.74
Overall, how would you rate this funeral home?	9.82
<i>Key: Average score using 10-point scale where 10=Excellent and 1=Poor</i>	
Full funeral service with burial	53.9%
Full funeral service with cremation	10.5%
Memorial service with burial	6.9%
Memorial service with cremation	16.3%
Direct cremation (no funeral or memorial service)	11.8%
Immediate burial (no funeral or memorial service)	1.4%
Green funeral with burial or cremation	0.1%
Where did you hold the service?	
Place of worship	43.3%
Funeral home	44.2%
Cemetery	16.1%
Reception center	0.6%
Crematory	1.3%
Was this the first time you used the funeral home?	
Yes	48.0%
No	52.0%
Did you use the funeral home to handle a funeral for a family member?	
Yes	1.3%
No	98.7%
Why did you select this firm?	
Previously served my family	57.5%
Reputation	39.3%
Location	30.4%
Attended non-family funeral in past	28.4%
Personal recommendation	20.6%
Facilities	19.6%
Prepaid funeral with firm	15.7%
Prearranged with firm	15.7%
Cost	5.2%
Advertising	2.8%

NFDA Family Satisfaction Survey 2017 Annual Results

	National Average
Funeral home website	28.7%
Church Bulletin	14.9%
Direct Mail	3.4%
Radio	6.8%
Television	14.9%
Yellow pages	9.2%
Newspaper	25.3%
Service Quality	
The funeral director who arranged the funeral or memorial service	9.82
Amount of time to plan and make purchasing decisions	9.77
Options presented for personalizing the funeral	9.81
Merchandise selection	9.75
Explanation of the funeral home's payment policies	9.75
Funeral director who directed the funeral	9.84
Appearance of your loved one	9.79
The cremation services	9.80
The cemetery experience	9.75
The staff's professionalism	9.88
The driver's politeness and appearance	9.91
Professional pallbearers' politeness/appearance	9.90
<i>Key: Average score using 10-point scale where 10=Excellent and 1=Poor</i>	
Cost of Services Provided	
Higher than expected	12.8%
As expected	80.8%
Lower than expected	6.3%
Cost of Merchandise	
Higher than expected	10.4%
As expected	84.0%
Lower than expected	5.6%
How likely would you be to recommend this funeral home to others?	
Very likely	95.7%
Somewhat likely	3.2%
Not very likely	0.5%
Not at all likely	0.6%
If the event you had to plan an event for all of your loved ones, this funeral home would be:	
Very likely	94.8%
Somewhat likely	3.6%
Not very likely	0.8%
Not at all likely	0.8%

NFDA Family Satisfaction Survey 2016 Annual Results

National Average	
# Responses=3,718	
Attention to detail	9.74
Courtesy of funeral home staff	9.84
Value of services you received	9.72
Overall, how would you rate this funeral home?	9.84
<i>Key: Average score using 10-point scale where 10=Excellent and 1=Poor</i>	
Full funeral service with burial	55.7%
Full funeral service with cremation	10.4%
Memorial service with burial	7.4%
Memorial service with cremation	15.3%
Direct cremation (no funeral or memorial service)	10.1%
Immediate burial (no funeral or memorial service)	0.9%
Green funeral with burial or cremation	0.3%
Location of funeral home	
Place of worship	44.8%
Funeral home	39.8%
Cemetery	13.3%
Reception center	0.9%
Crematory	1.3%
Was this the first time you used this funeral home?	
Yes	64.6%
No	35.4%
Did you use the Internet to find the funeral home?	
Yes	8.6%
No	91.4%
Why did you select this firm?	
Previously served my family	56.7%
Reputation	40.4%
Location	30.1%
Attended non-family funeral in past	29.0%
Personal recommendation	20.8%
Facilities	18.4%
Prepaid funeral with firm	16.7%
Pearranged with firm	15.0%
Cost	4.5%
Advertising	2.6%

NFDA Family Satisfaction Survey 2016 Annual Results

	National Average
Funeral Home's Personal Services	
Funeral home website	26.4%
Church Bulletin	22.6%
Direct Mail	5.7%
Radio	8.5%
Television	17.9%
Yellow pages	8.5%
Newspaper	23.6%
Funeral Home's Overall Performance	
The funeral director who arranged the funeral or memorial service	9.78
Amount of time to plan and make purchasing decisions	9.72
Options presented for personalizing the funeral	9.73
Merchandise selection	9.72
Explanation of the funeral home's payment policies	9.69
Funeral director who directed the funeral	9.80
Appearance of your loved one	9.68
The cremation services	9.75
The cemetery experience	9.70
The staff's professionalism	9.84
The driver's politeness and appearance	9.86
Professional pallbearers' politeness/appearance	9.84
<i>Key: Average score using 10-point scale where 10=Excellent and 1=Poor</i>	
Cost of Services Provided	
Higher than expected	13.3%
As expected	78.9%
Lower than expected	7.8%
Cost of Merchandise	
Higher than expected	10.0%
As expected	84.0%
Lower than expected	6.0%
How likely would you be to recommend this funeral home to others?	
Very likely	95.9%
Somewhat likely	3.0%
Not very likely	0.5%
Not at all likely	0.5%
In the event you had to plan another funeral, how likely would you be to use this funeral home again?	
Very likely	94.5%
Somewhat likely	3.7%
Not very likely	0.8%
Not at all likely	1.0%



Family Satisfaction Survey

National Funeral Directors Association

Your family recently utilized the services of a funeral home that is a National Funeral Directors Association member. NFDA shares evaluation information with member funeral homes to help them ensure they are meeting the needs of the families they serve. Your willingness to share your thoughts about the services you received is greatly appreciated. Please complete this brief evaluation survey and return it to the National Funeral Directors Association in the attached postage-paid envelope. Thank you.

Member ID:

53386

Name of deceased loved one: [REDACTED]

Date of Service: 11/6/2018

Type of service:

- ☒ Full service with burial
☐ Full service with cremation
☐ Memorial service with burial
☐ Memorial service with cremation
☐ Direct cremation
☐ Immediate burial
☐ Green funeral/burial
☐ Other _____

Location of funeral ceremony:

- ☒ Church/place of worship
☐ Funeral home
☐ Cemetery
☐ Reception center
☐ Crematory
☐ Other _____

1. Was this the first time you used this funeral home?

☒ Yes

☐ No

2. Why did you select this firm? (mark all that apply)

- ☐ Previously served my family
☐ Attended non-family funeral in past
☐ Prearranged funeral with firm
☐ Prepaid funeral with firm
☐ Location
☒ Facilities
☒ Reputation
☐ Advertising
☐ Personal recommendation
☐ Price

3. If you marked "Advertising" as a reason for selecting this firm, check the primary advertising source (mark only one).

- ☐ Funeral Home Website
☐ Church Bulletin
☐ Direct Mail
☐ Radio
☐ Television
☐ Yellow Pages/which one: _____
☐ Newspaper/which one: _____
☐ Other/which one: _____

3a. Did you use an internet search engine to find this funeral home?

☐ Yes

☒ No

If so, what words did you use in your search? _____

Please evaluate the following. Skip a question if it does not apply to your personal experience with the firm.

How would you rate:	Poor										Excellent
	1	2	3	4	5	6	7	8	9	10	
4. The funeral director who arranged the funeral or memorial service?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
5. The amount of time to plan and make purchasing decisions during the arrangement process?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
6. The options presented for personalizing the funeral of your loved one?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
7. The merchandise selection such as caskets, vaults, urns, etc.?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
8. The explanation of the funeral home's payment policies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
9. The funeral director who directed the funeral or memorial service you selected?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
10. The appearance of your loved one (if you had a viewing)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
11. The cremation services?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
12. The cemetery experience?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
13. The staff's professionalism?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
14. The driver's politeness and appearance?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
15. The professional pallbearers' politeness and appearance?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	

Please go to next page.

16. Who, if anyone, was especially helpful to you?

DANIEL ARMSTRONG

17. How was this person helpful?

Respectful, courteous, complete attention

18. How would you rate the funeral home's attention to detail?

Poor 1 2 3 4 5 6 7 8 9 Excellent 10
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☒

19. How would you rate the courtesy of the funeral home's staff?

Poor 1 2 3 4 5 6 7 8 9 Excellent 10
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☒

20. How would you rate the cost of services provided?

☐ Less than expected ☒ As expected ☐ Higher than expected

21. How would you rate the cost of merchandise (ex. casket, urn, vault)?

☐ Less than expected ☒ As expected ☐ Higher than expected

22. What, if anything, could have been done to improve the firm's service to you?

23. How would you rate the value of the services you received?

Poor 1 2 3 4 5 6 7 8 9 Excellent 10
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☒

24. Overall, how would you rate this funeral home?

Poor 1 2 3 4 5 6 7 8 9 Excellent 10
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☒

25. How likely would you be to recommend this funeral home to others?

☐ Not at all likely ☐ Not very likely ☐ Somewhat likely ☒ Very likely

26. In the event you had to plan another funeral, how likely would you be to use this funeral home again?

☐ Not at all likely ☐ Not very likely ☐ Somewhat likely ☒ Very likely

27. Please provide any additional comments about your experience with this funeral home.

Would you like to receive information on:

- ☐ Grief services or support groups
☐ Planning ahead for funeral wishes

☐ Monument or marker

☐ Other, please specify: _____

Please enter your contact information if interested in receiving the above. Otherwise, entering your name is helpful but optional.

Name _____

Email Address _____

Phone _____

Address _____

City _____

State _____

Zip _____

Thank you for taking the time to complete this survey.

**NUMBER OF FUNERAL HOMES IN THE 100
LARGEST U.S. CITIES THAT SELL DIRECT
CREMATIONS UNDER \$1,000 AND UNDER \$1,500***

<u>City</u>	<u>Number of Funeral Homes Selling Direct Cremations Under \$1,000</u>	<u>Number of Funeral Homes Selling Direct Cremations Between \$1,000 and \$1,500</u>
1. New York, NY	21	77
2. Los Angeles, CA	10	23
3. Chicago, IL	3	16
4. Houston, TX	3	16
5. Phoenix, AR	15	5
6. Philadelphia, PA	8	24
7. San Antonio, TX	7	4
8. San Diego, CA	10	12
9. Dallas, TX	6	14
10. San Jose, CA	4	4
11. Austin, TX	2	3
12. Jacksonville, FL	7	10
13. Fort Worth, TX	8	11
14. Columbus, OH	4	11
15. San Francisco, CA	4	4
16. Charlotte, NC	4	5
17. Indianapolis, IN	7	13
18. Seattle, WA	9	0
19. Denver, CO	3	17
20. Washington, DC	2	9
21. Boston, MA	2	8
22. El Paso, TX	4	5
23. Detroit, MI	4	22
24. Nashville, TN	3	7
25. Portland, OR	23	8
26. Memphis, TN	6	10
27. Oklahoma City, OK	4	8
28. Las Vegas, NV	9	6
29. Louisville, KY	8	12
30. Baltimore, MD	5	11

* All searches were done on www.funeralocity.com for direct cremation within 10 mile radius of the city center by lowest price.

<u>City</u>	<u>Number of Funeral Homes Selling Direct Cremations Under \$1,000</u>	<u>Number of Funeral Homes Selling Direct Cremations Between \$1,000 and \$1,500</u>
31. Milwaukee, WI	3	2
32. Albuquerque, NM	3	1
33. Tucson, AZ	7	4
34. Fresno, AZ	6	11
35. Mesa, AZ	10	7
36. Sacramento, CA	12	5
37. Atlanta, GA	3	8
38. Kansas City, MO	9	13
39. Colorado Springs, CO	7	13
40. Miami, FL	15	9
41. Raleigh, NC	1	3
42. Omaha, NE	1	2
43. Long Beach, CA	6	6
44. Virginia Beach, VA	1	1
45. Oakland, CA	4	5
46. Minneapolis, MN	0	14
47. Tulsa, OK	6	4
48. Arlington, TX	6	6
49. Tampa, FL	5	5
50. New Orleans, LA	0	2
51. Wichita, KS	2	3
52. Cleveland, OH	3	17
53. Bakersfield, CA	3	4
54. Aurora, CO	2	9
55. Anaheim, CA	15	9
56. Honolulu, HI	3	2
57. Santa Ana, CA	15	7
58. Riverside, CA	9	8
59. Corpus Christi, TX	0	1
60. Lexington, KY	4	1
61. Stockton, CA	4	2
62. Henderson, NV	3	2
63. St. Paul, MN	1	11
64. St. Louis, MO	7	20
65. Cincinnati, OH	3	13
66. Pittsburgh, PA	3	11
67. Greensboro, NC	7	2

<u>City</u>	<u>Number of Funeral Homes Selling Direct Cremations Under \$1,000</u>	<u>Number of Funeral Homes Selling Direct Cremations Between \$1,000 and \$1,500</u>
68. Anchorage, AK	0	3
69. Plano, TX	1	4
70. Lincoln, NE	0	2
71. Orlando, FL	7	5
72. Irvine, CA	11	6
73. Newark, NJ	4	23
74. Toledo, OH	1	6
75. Durham, NC	1	3
76. Chula Vista, CA	8	8
77. Fort Wayne, IN	0	4
78. Jersey City, NJ	22	80
79. St. Petersburg, FL	2	4
80. Laredo, TX	1	0
81. Madison, WI	1	1
82. Chandler, AZ	6	7
83. Buffalo, NY	3	14
84. Lubbock, TX	1	2
85. Scottsdale, AZ	12	6
86. Reno, NV	7	4
87. Glendale, AZ	16	2
88. Gilbert, AZ	9	7
89. Winston-Salem, NC	2	3
90. North Las Vegas, NV	8	6
91. Norfolk, VA	1	5
92. Chesapeake, VA	0	5
93. Garland, TX	3	3
94. Irving, TX	2	11
95. Hialeah, FL	16	11
96. Fremont, CA	0	1
97. Boise, ID	2	3
98. Richmond, VA	0	6
99. Baton Rouge, LA	0	4
100. Spokane, WA	7	3
	90 out of 100	99 out of 100