

FUNERAL CONSUMERS ALLIANCE

A nonprofit protecting your right to choose a meaningful, dignified, and affordable funeral

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Submission to the Federal Trade Commission re: amending the Funeral Rule

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Introduction

Funeral Consumers Alliance, Inc., is a federation of nonprofit consumer information organizations. We applaud the Federal Trade Commission's move to update and improve the Funeral Rule to better inform grieving families so that they may make funeral choices that fit their tastes and budget.

We will answer the FTC's questions in detail below.

In broad terms, we believe the most important and useful amendments to the Rule would be:

- 1.** Mandatory and prominent posting of General Price Lists (GPLs) on the websites of funeral providers.
- 2.** The same should apply to Outer Burial Container Price Lists and Casket Price Lists.
- 3.** Amendments to the current embalming disclosure to clarify that embalming is not legally required as a condition of viewing the body, but may be required by in-house funeral provider policies.
- 4.** Mandatory disclosure of third-party crematory fees, when applicable, directly adjacent to all cremation offerings and descriptions.

FCA also believes:

- 1.** Any online disclosure rules put in place should apply only to funeral providers who have a website or similar online source of primary information for consumers. We do not advocate for a requirement that funeral homes build such a site.
- 2.** There should be no exemptions granted to any funeral provider that would allow that provider to fail to provide a paper price list when arrangements are discussed in person. Electronic posting of price lists must be in addition to, not instead of, providing a paper copy during in-person arrangements discussions.
- 3.** Any new amendments to the Funeral Rule should be kept as simple and straightforward as possible to avoid placing unnecessary administrative burdens on funeral providers. FCA believes that the most effective amendments would also be the simplest. That is, extending the requirements under the current Rule, which apply today only to paper and telephone

discussions, to online venues that funeral providers maintain. We believe the philosophy and form of the current Rule is largely sufficient, and that extending these to the electronic sphere will offer consumers necessary and improved information access without burdening funeral providers.

Online and Electronic Price Disclosure

1. Should the Rule be changed to require (a) all funeral providers (b) funeral providers that maintain websites or (c) funeral providers who sell funeral products or services online, to prominently display their GPLs, or a clearly labeled link to their GPLs, on their websites? If so, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Should the Rule specify how the GPL or the link to the GPL should be prominently displayed on the website? Why or why not, and, if so, how? Explain how your proposal would benefit consumers and minimize the costs to businesses, and provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance National Reply:

Yes. All funeral providers as defined by the Funeral Rule, who have an existing website, should be required to post their General Price List on that website.

They should be required to do so regardless of whether they actually sell goods or services online through that website.

Providers should be required to post this GPL prominently, on the home page of the website. They should be required to make this notification in the same general style and type-size as the other menu items on the website. Providers should be prohibited from placing a small, unnoticeable link in an odd spot, such as the very bottom of the page underneath the copyright symbol.

The notification should be in plain language. Here are some examples to consider:

- General Price List
- Prices for our goods and services
- Services and prices

This will benefit consumers by giving grieving families timely access to complete price information that they cannot easily gather today. This is consistent with the basis and purpose of the Funeral Rule.

Such a requirement would also benefit the entire funeral marketplace by equalizing the information flow between buyer and seller. This is a necessary condition if we wish a market to operate freely and to include the normal disciplines on pricing that consumer information imposes.

Currently, the only way for consumers to obtain complete price information, and complete information on their rights under the Funeral Rule, is to visit a funeral home in person to pick up a paper price list.

This is burdensome and impractical, especially for grieving families who have a body that needs timely disposition.

Such a requirement would impose virtually no burden or cost on funeral providers. It would only apply to those who already have a website. All funeral homes already have a General Price List in electronic format which they use to print hard copies. This imposes no new infrastructure requirements. It does not require the creation of new documents.

The cost to businesses is so small as to be impossible to calculate. A series of mouse clicks to "upload pdf" is all that is required.

2. Should the Rule require (a) all funeral providers, (b) funeral providers that maintain a website, or (c) any funeral provider who shows pictures and/or descriptions of caskets, alternative containers, or outer burial containers on their website, to prominently display their CPLs and/or OBCPLs, or a clearly-labeled link to these documents, on their websites? If so, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance National response:

All funeral providers who maintain a website should be required to include a prominent link to their Casket Price List (CPL) and their Outer Burial Container Price List (OBCPL), for the same reasons as stated in the response to question one.

Funeral providers are already required to provide these lists to the consumer for perusal in person. This is a natural extension of the Funeral Rule's basis and purpose.

3. In the alternative or in addition to the proposed requirements in Questions 1 & 2, should the Rule require all funeral providers that maintain a website to display a prominent statement on their website that the providers' GPLs, CPLs, and OBCPLs can be requested and to include a link, button, email address, or other electronic mechanism for people to use to request the GPL, CPL, and/or OBCPL? If so, should the providers be required to respond to such requests within any particular time? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance National response:

Funeral Consumers Alliance believes that all questions about whether a provider must electronically transmit a price list by email or other means become moot if the requirement to display those lists on a website is enacted.

Consumers who would request a personal, one-to-one email communication to obtain a price list are, by definition, Internet users. Such consumers can be reasonably expected to be able to

visit a website and click the link. Email or text personal communications are not required in this instance, and would be an unreasonable request to make of funeral providers.

4. Would a requirement that funeral providers send their GPLs, CPLs and/or OBCPLs to consumers via electronic means and format present any challenges or costs for compliance or present any benefits to consumers? If so, how could such challenges or costs be minimized while still providing benefits to consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance National response:

As in our response to question three, we believe this is a moot point if the Commission enacts a requirement for providers to display their price lists on their websites. That requirement would be the least intrusive, and require the least additional work for funeral providers.

5. In addition to the proposed requirements in Questions 1 & 2, should a funeral provider that maintains a presence on social media be required to post the provider's GPL and/or clearly-labeled links to the provider's CPL and OBCPL on its social media account? Why or why not? If not, should a funeral provider be required to link its social media account to its main website if it has one, or, provide an email address or other online mechanism that will allow visitors to request the provider's GPL, CPL, or OBCPL, and a statement that consumers can request the price lists, and should the funeral provider be required to respond to such requests within any particular time? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance National response:

We believe funeral providers who maintain a social media site such as Facebook, which they use to promote their funeral home to the public, should be required to either:

- a. Place a prominent link to their price lists on that social media site.

or

- b. Place a prominent link to their main website, with a note that the link will contain price information.

We note that not all social media platforms lend themselves to requirements to "post" "links" or permanent documents. For example, micro-blogging platforms such as Twitter or Instagram do not present a static, unchanging "site" or "page" to users. They change constantly with new images and posts; they are not meant to and cannot function as a repository for static documents.

It would not be appropriate to require funeral providers to take the same approach to posting prices on such sites as the Commission might require on a static website or a Facebook page.

FCA also believes that the number of funeral homes that have such social media presences, but who do **not** also have a website, is likely to be very low. We believe few consumers would seek out these social media sites to look for prices.

6. In addition to the proposed requirements in Questions 1, 2, & 5, should the Rule contain other provisions that will embrace new platforms and technologies as they develop so that both providers and consumers can benefit from new distribution methods without requiring a Rule change? If so, how and what types of provisions would be most appropriate? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance National Response:

We recommend that the Commission consider carefully how new proposals will, or will not, be applicable to technologies that have not yet been imagined or introduced. We suggest the following guiding principle: Disclosure rules should apply to any communications technology or platform that a provider may use as a *primary information source* and/or as a *public face* for the business.

For example, a website is a primary information source. While the content of a website will change with time, a business' basic and timeless information will always be included. Name, address, phone number, and, if the Commission so orders, price information would likely always be found on a website.

Internet users and consumers see websites, today, as primary "public faces" of the businesses they patronize.

If a future communications technology becomes popular, and funeral providers adopt that technology to create a "public face" for their business, then all the disclosure rules should apply to that new technology, even though its particular name is not reflected in the regulatory language.

7. Should the Rule mandate that funeral providers be required to post a GPL, CPL, or OBCPL, or a clearly-labeled link to these documents, on any electronic, online, or virtual method or platform that it uses to post or otherwise make available information about its products or services, sell products or services, or communicate with customers or potential customers on a non-individual basis? If so, why, and how should the Rule define or otherwise explain when GPL, CPL, or OBCPL, or a clearly-labeled link to these documents, must be posted? Also, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance response:

Yes, providers should be required to post those price lists on any electronic medium that they use as a venue to promote or sell their services, subject to the concerns we shared in answer to question six, above.

The explanation for why we believe this is necessary flows from the philosophical premises articulated by the Funeral Rule's basis and purpose. The Rule already recognizes that consumers are in need of information about funerals in order to make choices that fit their tastes and budgets.

In 1984, when the Rule was made effective, the only possible means of conveying this information was on paper, or over the telephone. Today, in 2022, the Internet has replaced paper and the phone for most circumstances.

This requirement is a natural extension of the Rule's basis and purpose.

8. Would requiring a funeral provider to provide the price lists online (which could be defined to include a social media account or other electronic, online, or virtual method or platform) impose any challenges or costs for businesses, including small businesses, or provide any benefits to consumers? If so, how could such challenges or costs be minimized while still benefiting consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance response:

For the reasons articulated above, yes, such a mandate would benefit consumers because it would result in consumers having access to the information contemplated in the Funeral Rule's basis and purpose.

Also as above, any costs associated with electronic posting are so minimal as to be hard or impossible to calculate.

However, FCA does not believe that it serves a substantial consumer purpose to require funeral providers to duplicate the complete information shown on their websites or primary public-facing electronic platforms *when those platforms are not primary and do not lend themselves to the function of being a document storage repository.*

For example, it is not possible, to our knowledge, to "put your price list on your Instagram", if by that we mean "place the price list on the platform in such a way that it is immediately obvious to a visitor." That platform, along with other fast-moving micro-blog platforms such as Twitter, are not meant for such functions. And consumers and users do not use those platforms for that purpose.

A requirement that the funeral home post its complete price information on its website or primary, public-facing electronic platform, should be sufficient.

9. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule require all funeral providers (with or without websites) to offer to send their GPLs, CPLs, or OBCPLs electronically to a person who asks about the providers' goods or services, or asks for a copy of any of the price lists? This would include requests by telephone, text, email, weblink, social media, fax, U.S. Mail, or other new communication methods that may emerge in the future. If so, should providers be required to send the information within a certain time frame unless the person declines the offer, or does not provide an email address or other method for receiving the electronic information? In addition, should such a requirement contain an exception for funeral providers who post their GPL, CPL, and OBCPL clearly and conspicuously on its websites? Why or why not? Provide all evidence that supports your answer, including 57 any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance response:

We do not believe that funeral providers should be required to both a) post their price lists on their websites *and also* b) respond to personal, one-to-one electronic communications requesting a price list sent personally to one prospective consumer.

Any consumer who would request a price list by electronic means is, by definition, an Internet user. That means they have the capability to visit a site and read the price list for themselves. Funeral providers should not be asked to engage in duplicative personal requests for information that the consumer can reasonably be expected to view for himself.

10. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule require all funeral providers to electronically distribute their GPLs at the start of any arrangements discussion that is not in-person, unless a hard copy has already been provided? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance response:

It is hard to define "provide electronically" in this context. Suppose Jane Smith calls Mason funeral home to make arrangements. Jane does not have a computer or does not use the Internet or a smartphone. How would a funeral home "electronically provide" Jane a copy of the price list during the telephonic arrangements conference?

In addition, electronic technology changes so quickly that whatever we might call "electronic provision" today could be eclipsed in one month by a new form of information exchange. Consider how quickly "swipe your card to pay" was replaced with "tap your card to pay" or "wave your phone close to this device to pay."

FCA agrees that any "funeral arrangements discussion", whether it takes place in person, by Internet chat, by email, or by telephone, should trigger a requirement for the funeral provider to give the customer a price list.

But *how* this can be done is in question. What would constitute delivery? What would constitute proof of delivery?

We do not have a conclusive answer. We would like to see a discussion of this issue from various stakeholders.

As a guiding principle, we suggest considering the following. In these scenarios, assume that the Commission has already mandated that funeral providers place their price lists on their websites:

- a. A funeral provider during telephone arrangements should alert the consumer at the beginning of the discussion that a complete price list is available on the web site, and give the location of that website.
- b. A funeral provider making arrangements with a consumer by email correspondence, or by Internet live chat, must alert the consumer of the online location of the price list at the beginning of this discussion.

We believe that, after this occurs, it is the consumer's responsibility to decide whether to take advantage of this information. The funeral director's responsibility has been discharged when the provider alerts the consumer of the price list and provides the location. The provider cannot be responsible for whether the consumer actually reads the material.

11. In the alternative or in addition to the proposed requirement in Question 10, should the Rule require that, if the consumer is making selections for a funeral arrangement online, then the provider would need to offer a prominent link to the GPL before allowing the consumer to proceed with selections? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance response:

If the Commission mandates that funeral providers put their complete price lists online, that mandate would (or should) extend to any platform the provider uses that allows the consumer to make selections and purchases. For example, if the consumer encounters a "shopping cart" module, that module should display to the consumer a link to the complete price list. This "prompt" should remain visible throughout the selection process; it should not be allowed to merely mention it once, and then have the prompt and link disappear when the consumer scrolls past the first step.

12. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, 6, 10, & 11, should distribution of electronic copies of the CPLs and OBCPLs also be required if discussing or showing those items in an arrangements discussion that is not in-person, or if the consumer is making selections concerning those items while shopping online? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

We believe these should be provided in the same manner, under the same circumstances, as we described in the above responses.

13. With respect to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule mandate how quickly funeral providers should be required to update the GPLs, CPLs, and OBCPLs posted on their websites, social media sites, or on other electronic sites? In 58 support of your position, identify all costs that funeral providers incur each time they update the GPL, CPL, or OBCPL on their website. Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

The extant Funeral Rule already requires funeral providers to disclose *accurate* prices to the public in their price lists. This implies that outdated price lists that do not contain current prices would not meet the Funeral Rule's requirements.

This obtains whether the price lists are on paper, or in pixels. Funeral providers should be required to update the online versions of their price lists whenever they update their price lists to reflect changes in services, goods, or costs.

In plain language, if a funeral home updates its paper price list, it should be required to also update its online price list at that time.

14. Should funeral providers be required to send an electronic copy of the Itemized Statement of Funeral Services to people who do not meet with a funeral provider in person, such as persons making arrangements over the telephone, email, or online, before agreeing to services? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

Funeral providers should be required to electronically transmit a copy of the Statement of Goods and Services Selected (SFGSS) when the arrangements discussion does not take place in person.

This is a natural extension of the extant Funeral Rule, which requires providers to give a SFGSS on paper at the conclusion of the in-person arrangements discussion. As in all other matters regarding disclosures and provision of information, FCA believes the electronic requirements should mirror the extant requirements for paper-based information.

15. Should any funeral providers be exempted from any of the proposed requirements described in Questions 1, 2, 5, & 6? Why or why not? If so, who are they, how many funeral providers would qualify for this exemption, and how would the exemption impact consumers? Provide all evidence that supports your answer, including any

evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

No funeral providers should be exempted from any requirements of the Funeral Rule as it exists today, or in any form in which it may exist after modification. The Funeral Rule does not contemplate "exemptions" for different "types" of funeral providers. There is no justification for contemplating any exemptions for any business that meets the definition of "funeral provider."

For clarity, however, FCA is *not* proposing that funeral providers who do *not* have a website should be subject to online price posting rules. We do not believe the FTC should enact any requirement that would compel a funeral home to build a website if it does not already have a website.

Crematory Fees and Additional Costs

16. Should all funeral providers be required to list third-party crematory fees in the description and price for direct cremation on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs and benefits to businesses, including small businesses.

Funeral Consumers Alliance Response:

All funeral providers should be required to either:

a) include the third-party crematory cost within the provider's price for any cremation service

or

b) clearly disclose third-party crematory fees directly adjacent to the listed price for cremation, whether that be direct cremation or a cremation with additional services.

In the 1970s and 1980s, when the Rule was being drafted, the FTC could not anticipate the way in which crematory fees would be inappropriately hidden by providers. But we now know how such providers do this. The current Funeral Rule allows providers to treat third-party crematory fees as "cash advance" items.

A study by Funeral Consumers Alliance and Consumer Federation of America found that 20 percent of providers surveyed failed to disclose on their price lists the actual cost of cremation (the third-party fee) in their advertised prices for cremation.¹

Cash advance items are those items and services, such as flowers, clergy honoraria, cemetery

¹ "Cremation Services: Highly Variable and Misleading Pricing, Lack of Disclosure, and Violation of Federal Rules," 2016. Joshua Slocum and Stephen Brobeck, on behalf of Funeral Consumers Alliance and Consumer Federation of America. Available at: <https://funerals.org/wp-content/uploads/2020/02/2016-9-12-FCA-CFA-Cremation-Report.pdf>

costs, obituary fees, and more, for which the funeral provider advances money to the third party business on the consumer's behalf. The current Funeral Rule allows providers to list cash advance items separately, in a different location on price lists and itemized statements. This means that the actual cost of the cremation—the crematory's fee for performing the physical cremation—is not shown within, or next to, the advertised price for direct cremation and other cremation packages.

This has led to a situation in which a minority of funeral providers are engaging in what can only be called fraud. This minority of providers is selling "cremation" that doesn't actually include the cremation itself. It is a surprise to consumers to see that the cost for a \$1,000 direct cremation suddenly becomes \$1,350.

Every consumer who has contacted Funeral Consumers Alliance to inquire about crematory fees has said a version of the following statement: "What exactly is the funeral home selling me for \$1,000, that it calls 'direct cremation', when that doesn't actually buy cremation?"

FCA agrees. If automobiles were sold this way, Dealer A would list a Toyota Camry for \$30,000. But when the buyer went to the sales office to complete the transaction, Dealer A would surprise the buyer with a \$5,000 "internal combustion engine fee". No consumer defines "automobile" to mean "a shell with wheels, but without an engine." In the same way, no consumer defines cremation as "Some sort of service which does not include the actual cremation."

Crematory fees are not analogous to fees for a casket spray from an outside florist. The cremation process itself is organically and inherently part of any reasonable person's definition of "cremation".

17. Alternatively, should funeral providers that do not include the cost of third-party crematory fees in the price for direct cremation on the GPL be required to include a statement on the GPL in close proximity to the price for direct cremation that purchasers will be required to pay an additional third-party crematory fee and include a typical price range for the third-party crematory fee? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs and benefits to businesses, including small businesses.

Funeral Consumers Alliance Response:

The Commission should not allow the provider the option to "not include" or not disclose the actual cost of cremation, the third-party crematory fee. It is not acceptable for a provider to disclose the true cost *after pitching the service and making the sale*. To do so is in direct violation of the Funeral Rule's basis and purpose: To give consumers accurate and complete information *before the sale is made*.

FCA recognizes that many funeral providers use more than one third-party crematory, and that each of these businesses charges different fees. We recognize that in such cases, it would not be accurate or practical for the funeral provider to "include" the cost of the crematory fee within the provider's price for direct or other cremation, since the provider may not know which crematory will be used for any given future customer.

Contrary to industry claims, however, it is not true that these funeral providers "don't know the

fees at the crematories." If a funeral provider uses the same three outside crematories, that funeral provider obviously does know the costs charged by these providers.

However, it is true that many funeral providers will not know which of the crematories they use will be available when a death occurs for any given customer.

In such cases, we recommend that the Commission require providers to list a price-range for crematory fees directly adjacent to the cost for each cremation service they sell, whether it be direct cremation, or a more elaborate cremation package. We also recommend that the Commission write regulatory language that reflects its awareness that this constitutes a good-faith effort at disclosure by the provider.

Funeral providers should not be penalized for giving a good-faith estimate of outside crematory costs when, inevitably, some crematories will change their fees before the funeral provider is aware of this change, and before the provider has time to update the price list.

We suggest something like the following language:

"Jones Funeral Home uses several crematories depending on the availability of those crematories. Each of these sets its own price, which Jones Funeral Home will add to the cost of the cremation you select. Currently, the range of prices charged is \$350 to \$600. You should expect an additional charge within that price range to be added to the cost of any cremation arrangements you select.

Your final itemized receipt will reflect the specific charge levied by the crematory used."

18. Should all funeral providers be required to list additional items related to direct cremation or immediate burial not included in the price for direct cremation or immediate burial on the GPL? Why or why not? If so, which fees should be required to be disclosed? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

FCA is not aware of what "additional items related to direct cremation or immediate burial" might be aside from third-party crematory fees. We do not believe there is a need to require funeral providers to list any such additional items or fees that are not already required to be disclosed under the Funeral Rule.

19. In addition to the proposed requirements in Question 18, should funeral providers be required to include such items in close proximity to the price for direct cremation or immediate burial? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including

how adding this requirement might impact the consumer experience, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

See the answer to question 18, above.

20. In the alternative to the proposed requirements in Question 18 & 19, should all funeral providers be required to list on the GPL in close proximity to the cost for direct cremation and immediate burial a statement listing additional fees that the funeral home knows consumers may incur when they select a direct cremation or immediate burial and the typical price range of such fees, if such fees are not included in the price for direct cremation or immediate burial? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

See the answer to question 18, above.

21. In the alternative to proposed requirements in Questions 18, 19 & 20, should funeral providers be required to include a statement in close proximity to the price for direct cremation or direct burial on the GPL that says that additional fees may apply? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the burdens and benefits to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

See the answers to questions 18 and 20 above.

Reduced Basic Fee Services

22. Should the Rule be amended to clarify when funeral providers may charge a reduced basic services fee? Should the definition of direct cremation and immediate burial in the Rule be amended to allow those offerings to include limited viewings, limited visitations, or other services? Why or why not? If so, what limited viewing, limited visitations, or other services should qualify for the reduced basic services fee under this definition? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

We will treat question 22 as two separate questions. The issue of the basic services fee is distinct from the question of what is included in direct cremation and immediate burial.

The Basic Services Fee

FCA believes the basic services fee has been misused, and we believe that it should be removed from the Rule. However, we are aware that the Federal Trade Commission is not interested in deleting the fee.

FCA believes it would be appropriate for funeral providers to charge a lower, modified basic services fee for minimal services such as direct cremation or immediate burial. Indeed, as the Commission is aware, many funeral homes have done so for years and are doing so today. It is common to see a funeral home price list with a basic services fee of, for example, \$2,000, while the funeral home's fee (which "includes" this basic fee) is lower at, for example, \$1,200.

We recognize that consumers who select minimal services such as direct cremation or immediate burial are using proportionally less overhead, facilities, and staff time, compared to consumers who arrange more elaborate funerals. It would be appropriate for the FTC to clarify that it is acceptable for providers to charge a modified fee in these circumstances.

Services Included in Direct Cremation and Immediate Burial

FCA believes the Commission should not allow funeral homes to include optional, ceremonial services within their packages for direct cremation or immediate burial. This is because direct cremation and immediate burial are the least expensive, and least elaborate, arrangements available to the consumer.

If the Commission were to allow embalming, visitation, or other optional ceremonial services to be included in these packages, this would contradict the rule's fundamental purpose: Allowing consumers to itemize in order to control costs. If the Commission were to allow such inclusions without requiring providers to offer direct cremation and immediate burial without optional services, this would allow funeral homes to re-bundle. Bundling was one of the significant problems the Rule was written to combat.

"(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;"

—CFR 453.2, b, (1), (i)

Further, we believe the Commission should amend the Rule to remove language that seems to permit funeral providers to bundle in optional ceremonies into immediate burial:

(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.**

—CFR 453.2, (k)

A "graveside service" is, or should be, an *optional* ceremony, just as embalming and visitation are optional. The current Rule seems to permit funeral providers to bundle this service into their least expensive, least elaborate packages. This is unfair to consumers who would not select a graveside service. FCA surveys indicate that charges from \$400 to \$750 are common for graveside services when they are listed as itemized costs.

FCA is *not* asking the Commission to bar funeral homes from offering a package that includes a graveside service. Indeed, providers are already free to construct any package they like. What matters is that providers should not be allowed to *substitute* an inclusive package for the basic, and less expensive, option.

We request the Commission:

a. remove the phrase "except for a graveside service" from the definition of immediate burial

b. rename what is currently called "immediate burial" to "direct burial." This is more accurate. No burial is "immediate". It is rare for any funeral home to be able to coordinate a burial with a cemetery in one day or less. "Direct burial" would clear up consumer confusion, and it would parallel "direct cremation".

c. disallow funeral providers from adding any optional ceremonies or services to direct cremation or immediate burial. Providers are already allowed to offer other packages that include these services, and consumers are already free to add these services, for a fee, if they desire them.

Alternative Forms of Disposition

23. Should the Rule language be amended to specifically address alternative forms of disposition, including alkaline hydrolysis and natural organic reduction? Why or why not? If so, how should the Rule address these services? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

We do not believe it would serve a compelling consumer interest to require funeral providers to list or define any disposition services except those the funeral provider offers. New disposition options will appear over time. Whether they become popular cannot be predicted. The only appropriate requirement, in our view, would be that funeral homes must accurately describe any disposition option they choose to offer, as nearly every funeral provider already does as a matter of course.

24. Should the Rule be amended to state that providers of alternative forms of disposition, such as alkaline hydrolysis and natural organic reduction, could offer direct or immediate services with a reduced basic services fee? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

We believe this question turns only on what the Commission decides regarding the basic services fee as it relates to minimal service packages. Whether the physical process in question is cremation, burial, alkaline hydrolysis, or any as-yet-unimagined form of disposition, is irrelevant.

25. Should the Rule be updated to provide exceptions for the requirements to provide alternative containers and disclosures related to alternative containers for funeral service providers using new methods of disposition or direct disposition that do not require a container? Why or why not? If so, how should the Rule be amended to allow such exceptions? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

We believe the Rule should be amended to clarify that required disclosures, such as the requirement to offer alternative containers for cremation customers, only apply to those services which rationally require such a disclosure. It would not make sense to require a provider to give a consumer disclosures about cardboard alternative containers, for example, if the funeral home is offering alkaline hydrolysis (which does not use a cardboard container).

Any amendments made to recognize alternative forms of disposition, such as alkaline hydrolysis, should parallel existing disclosure requirements for services such as direct cremation.

For example, if an alkaline hydrolysis provider requires that the body be contained within a shroud or container able to be broken down by this chemical process, that provider should be required to list the option and cost of that container that is analogous to the alternative container necessary for flame cremation.

26. Should additional disclosure language relating to alternative forms of dispositions be added to the Rule? If so, what should the disclosure say? How would the additional disclosure language impact the overall consumer experience or create any benefits or costs to consumers and businesses, including small businesses?

Funeral Consumers Alliance Response:

It is difficult to answer this broad question. In general, FCA does not believe that any additional disclosures would be necessary. Adding such disclosures, whatever they might be, could risk adding duplicative and unnecessary work for both providers and Commission staff. We are concerned there would not be a commensurate consumer benefit to justify this.

27. Are there provisions of the Rule that are in tension with alternative forms of disposition? If so, what are those provisions, and how are they in tension with alternative forms of disposition? Provide all evidence that supports your answer and explain whether and how the tension between the Rule and alternative forms of disposition creates costs for consumers and businesses, including small businesses.

Funeral Consumers Alliance Response:

The answer to this is not clear. We believe any amendments to the Rule regarding this question should be guided by the following principle.

If there are disclosure or other requirements in the Rule that lead to contradictions or absurdities—for example, requiring a Jewish funeral home that does not offer any form of cremation to list "direct cremation" on its price list—the rule should be amended to remove these contradictions. This might be accomplished by judiciously adding phrases such as "when applicable."

Embalming Disclosure

28. Should the embalming disclosure contained in section 453.3(a)(2)(ii) of the Rule be amended to ensure consumers understand the specific circumstances in which embalming may be required under state law? If so, how should the disclosure be updated? Identify any surveys, studies, or other evidence that supports your position.

Funeral Consumers Alliance Response:

Yes, the embalming disclosure should be amended. For decades, consumers who contact Funeral Consumers Alliance with questions about the embalming disclosure have mentioned confusion. Many of these consumers have read the disclosure and come to a conclusion *in opposition to reality and in opposition to the disclosure's goal*. That is, these consumers have read the disclosure to mean "Embalming is required **by law** if you select a funeral with a viewing."

This is not true. No U.S. state requires embalming as a condition of viewing the body. We will offer suggested changes to the disclosure language in responses to questions below.

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

follows: If the provider operates in a state that never requires embalming by law, the provider must state: “Embalming is not required by law in _(name of state).” If the provider operates in a state that requires embalming by law under certain circumstances, the provider must state those circumstances: “Embalming is required in –(name of state) when (list the state’s legal requirement).” If the provider operates in multiple states with different requirements for embalming, the provider would list the requirements for each state in which the provider operates. Why or why not? Identify any surveys, studies, or other evidence that supports your position.

Funeral Consumers Alliance Response:

Yes, the Rule should be amended to modify this disclosure in a manner akin to what this question suggests. In our view, this amendment should be guided by this principle. If embalming is never required under any circumstances in the state in which the provider operates, not only should the Rule not require providers to use disclosure language that implies there is such a requirement; the Rule should go further and **explicitly prohibit** providers from using any language that suggests such a legal requirement exists in that state.

Commission staff have already recognized this need in the most recent version of the publication "Complying With the Funeral Rule":

"Delete the phrase, 'Except in certain special cases' from the embalming disclosure if state or local law in the area where you do business does not require embalming for a viewing and funeral. If you want to add information about state law requirements, you can do so after the FTC disclosure. You should place this disclosure in immediate conjunction with the price for embalming.

30. Should a funeral provider be required to disclose its policy regarding embalming on the GPL in close proximity to its description and price for embalming services? In addition or in the alternative, should a funeral provider be required to inform consumers that it does not possess refrigeration facilities, which may limit a consumer’s options to avoid embalming under state law, or add fees related to third-party refrigeration facilities, in close proximity to its description and price for embalming services? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

This entry contains several different questions; we will separate them.

Embalming Policies

Yes, funeral providers should be required to state their policies regarding embalming and viewing. This is related to the concept of state legal requirements. This amendment is necessary to clarify for consumers that embalming is not required by law (when it is not required in that

state). Funeral providers should be required to clearly state to consumers that their in-house policies on embalming and viewing are merely that; in-house policies, not state laws. The Rule should allow no room for ambiguity.

We propose the following amendments to the embalming disclosure:

1. For those states with any legal requirements for embalming under any circumstances:

Embalming is only legally required in [insert provider's state] in the following circumstances: [insert description of circumstances, such as 'when the body is not refrigerated, buried, cremated, or donated to anatomical science within X days' for example]. This requirement may be found in [insert statutory or regulatory citation].

2. Providers with an in-house policy requiring embalming for public viewing should be required to include the following statement directly below the above:

[Name of provider]'s policy is to require embalming for public viewing of the body.

3. For those states with no legal requirements for embalming under any circumstances:

Embalming is not legally required in [insert provider's state].

4. Providers with an in-house policy requiring embalming for viewing should be required to include the following statement directly below the above:

[Name of provider]'s policy is to require embalming for public viewing of the body.

31. Should funeral providers that do not offer embalming services to any customers, due to their religious traditions or for other reasons, be required to include an embalming disclosure on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

The Rule should be amended to clarify that providers are **not** required to "offer" services (by listing them on the price list) that they do not in fact offer. The Rule should also be amended to clarify that providers are **not** required to list disclosures relating to goods or services that they do not offer.

The most obvious example is the confusion experienced by some Jewish funeral homes. Some Jewish funeral homes do not offer cremation, and some do not offer embalming. These providers follow a conservative or Orthodox view of Jewish funeral custom, which disapproves of these practices.

It is irrational for such funeral homes to be required to list options, or to offer disclosures relating to those options, when the provider does not sell them.

We suggest that any such amendments be written in a neutral and secular manner; amendments should not state or give the impression that they apply only to certain businesses that make a *religious* claim to exemption. Any funeral provider that does not offer cremation or embalming, for example, whether this choice is based in religious philosophy or not, should not be required to list those items or disclosures.

We note to FTC staff that it may be necessary to clarify that there are some disclosures and requirements that *all* funeral providers must adhere to. There is evidence that some providers believe, incorrectly, for example, that they may simply choose "not to offer direct cremation," and to offer only more elaborate cremations. This problem is illustrated in a 2007 letter to the FTC (Advisory Opinion 07-10). In this letter, Nixon Consulting asked if providers could omit "direct cremation" from their price lists if they preferred to sell only more elaborate cremations. The staff opinion issued in response clarified that, no, all providers who offer cremation must offer direct cremation. ²

Price List Readability

32. Should the GPL, CPL, and/or OBCPL requirements be changed to improve readability for consumers? If so, what changes could be made to the format that would make the documents easier for consumers to comprehend and for businesses to know they have complied with the Rule? Also, state whether your proposed changes would add additional disclosure requirements to the Rule. If so, how would the additional disclosure language impact the overall consumer experience and describe any benefits or costs associated with these disclosures. Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses, and all surveys, studies, or other evidence that supports your position.

Funeral Consumers Alliance Response:

FCA believes that price lists should be clear and easy to understand. But without more specificity we cannot offer an answer.

33. Should the Rule provide more specific requirements to ensure that the mandatory disclosures are clear and conspicuous? If so, how and why? Provide all evidence that 64 supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses, and all surveys, studies, or other evidence that supports your position.

Funeral Consumers Alliance Response:

We do not believe the Rule itself needs to be amended to address this issue. However, we do believe that it is necessary for the FTC to assertively remind providers of their duty to place the Right of Selection (ROS) disclosure *before any funeral goods or services are offered or listed*.

² Advisory Opinion 07-10, available at: <https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-07-10>

The ROS disclosure alerts consumers that they have the right to choose item by item, that they do not have to buy a package. The Rule itself requires providers to place the ROS before any specific goods or services are offered.

However, FCA has noted that some funeral providers disobey this requirement, burying the ROS disclosure on page 5, or page 10, well after the provider has featured elaborate and costly packages.

This behavior is already prohibited under the Rule. A more assertive educational approach in FTC business publications such as *Complying With the Funeral Rule* might ameliorate this problem.

34. —No response.

35. Should the Rule be changed to require that the mandatory disclosures on the price lists be in the same font, color, and size as the rest of the content on the price lists? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

Yes.

36. Should the Rule require that the GPL, CPL, and OBCPL be in machine-readable format? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

No, the Rule should not require price lists to be in machine-readable format. While we recognize the utility of this for regulatory staff and researchers (we at FCA are researchers, too), we worry that it would introduce unnecessary costs, may conflict with a provider's legitimate right to design its own price and sales material, and bring only a very limited and marginal benefit that would not outweigh the costs.

Impact on People in Underserved Communities

37. Are there any funeral provider practices that disproportionately target or affect certain groups, including lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer, including any evidence that quantifies the impacts upon affected consumers and 65 communities, and the impacts to businesses, including small businesses and businesses owned and operated by members of historically underserved communities.

Funeral Consumers Alliance Response:

Our experience over nearly 60 years of communicating with grieving families across America leads us to conclude that income level is the most salient issue for families arranging funerals. All families who find funerals are unaffordable or financially burdensome feel the same level of burden.

We also recognize that many American families tend to choose funeral homes that they perceive are among, or aligned with, their racial, religious, or ethnic status. We have observed that this can pose problems for poor families who believe that the funeral home run by "my community" is the best or only choice, even if that funeral home is considerably more expensive than a provider who is not a member of that demographic category.

FCA believes that modernizing the Funeral Rule to include online posting of price lists and clarifying existing disclosures and options is the best method to give consumer families—poor or rich—the information they need to make choices that fit their needs.

38. Should any of the provisions of the Funeral Rule be amended to avoid disproportionately impacting or affecting certain groups, including people living in lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses and businesses owned and operated by members of historically underserved communities.

Funeral Consumers Alliance Response:

See the answer to question 37, above.

39. Are there any special issues or concerns related to the disclosure of price information when consumers use benefits provided by programs to help families of veterans and low-income consumers cover funeral expenses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Funeral Consumers Alliance Response:

While we applaud funeral providers who take the initiative to inform families of the existence of such programs and benefits, we do not believe the Rule should require providers to do so.

40. Are there circumstances in which funeral providers should be required to make price lists, disclosures, and statements of services selected available in languages other than English? For instance, should funeral providers be required to provide itemized price lists in any language they use for advertising, or in any language they use to make funeral

arrangements? What would be the effect of such a requirement, and what costs and benefits would it entail?

Funeral Consumers Alliance Response:

FCA does not believe it would be appropriate or productive to require funeral providers to engage and pay for language translation services. We believe this is an issue best addressed by the market.