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– A Federation of Nonprofit Funeral Consumer Information Societies –

UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of the
Trade Regulation Rule on Funeral Industry Practices ("Funeral Rule")

16 CFR PART 453

COMMENTS OF THE FUNERAL AND MEMORIAL SOCIETIES OF AMERICA ON THE COMMISSION'S REVIEW OF THE FUNERAL RULE

The Funeral and Memorial Societies of America ("FAMSA") files these comments pursuant to the Request for Public Comments issued by the Federal Trade Commission ("Commission") at 64 Fed. Reg. 24,250 et seq. (May 5, 1999).

FAMSA is an educational organization comprised of more than 120 nonsectarian, nonprofit funeral planning societies dedicated to a consumer's right to choose a meaningful, dignified, affordable funeral. It provides educational materials on funeral choices to increase public awareness of funeral options, including how to care for your own dead; monitors the funeral industry trends and practices nationally and exposes abuses; serves as a consumer advocate for reforms on the national level and lends support for changes where needed on the state or local level; serves as a credible source of information for media covering issues on dying and death; seeks to create partnerships of interest with national organizations sharing similar concerns; provides leadership support for local memorial and funeral planning societies; refers individual inquiries to appropriate societies and agencies supplying local services; and provides a conduit for exchanging information among all concerned.

By separate notice filed today, FAMSA also requests an opportunity to participate in the Public Workshop Conference to be held this fall to explore in greater detail the issues raised in this proceeding.

~ Protecting a consumer's right to choose a meaningful, dignified, and affordable funeral ~

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I. Introduction

FAMSA is pleased to respond to the questions raised by the Commission in the Request for Comments. The Funeral Rule continues to yield benefits for consumers of funeral goods and services across the country. The Rule can and should be improved, however, and the amendments and additions suggested by FAMSA are discussed below.

These recommendations are based on letters, e-mail and phone calls to FAMSA from consumers of funeral goods and services. In the last three years alone, the FAMSA office has received more than 7,000 e-mails. (U.S. NEWS AND WORLD REPORT printed the toll-free telephone number and the address of the organization's web site — <http://www.funerals.org/famsa> — in its March 23, 1998 issue, which the organization presumes is largely responsible for the more than 6,000 e-mails and estimated 12,000 telephone calls received in 1998 and 1999 alone.) Although most consumers contact us to request information, we have logged more than 350 complaints, of which at least 221 complaints concern funeral homes, 128 complaints concern cemeteries, and four complaints concern monument dealers.

In preparing its response, FAMSA has been mindful of the guidance offered by the Commission when it last initiated a periodic review of the Funeral Rule. In 1987, the Commission state that while comments offered in response to a request from the Commission, “need not adhere to any particular standard,” nevertheless “[a] comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information.” 52 Fed. Reg. 46706 (Dec. 9, 1987). Because the rule enjoys a “presumptive validity,” and the Commission “need not develop additional evidence to justify retaining the Rule,” FAMSA has focused its efforts on supporting its proposed amendments, and not on justifying the very existence of the Funeral Rule. *Id.*

II. Questions and Responses

(1) Is there a continuing need for the Funeral Rule? (a) What benefits, if any, has the Rule provided to purchasers of funeral goods and services? (b) Has the Rule imposed costs on purchasers?

There is absolutely a continuing need for the Funeral Rule. In fact, and as discussed in detail below, FAMSA is recommending several amendments to strengthen the Rule.

The crucial benefit to purchasers of funeral goods and services has been access to information. The Commission was correct when it wrote in 1994: “If the Rule's only benefit were to increase informed consumer choice (without imposing substantial costs on the industry), regardless of whether some chose to spend more for their arrangements than they would have without the Rule, that benefit would likely justify retention of the Rule because other consumers would have the right to choose to spend less.” 59 Fed. Reg. 1592, at 1599. Much of the data that FAMSA has gathered, both nationally and at the local

level, has been made possible by the price disclosure portions of the Rule. Industry sources acknowledge that they are beginning to see more funeral “shoppers.” [See Attachment #1, MORTUARY MANAGEMENT, April 1999.]

Nevertheless, industry-wide practices that are contrary to the letter and spirit of the Funeral Rule continue to thwart the second goal put forth in 1982 and 1994 as justifications for the Rule — increased price competition. The intransigence of some funeral providers, coupled with unforeseen impacts of the amendments made to the Rule in 1994, continue to impose unwarranted and anti-competitive costs on funeral consumers.

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers? (a) How would these changes affect the costs the Rule imposes on the funeral providers subject to its requirements?

FAMSA seeks the following amendments and additions to the Rule:

- Ⓒ Elimination of any non-declinable fee. Fees that are non-declinable by their very nature reduce consumer choice. This is antithetical to the principle underlying the Funeral Rule.
- Ⓒ Addition of four items to the required options on the General Price List (GPL) — the cost of (i) private viewing without embalming, (ii) body donation to a medical school, (iii) the cremation process, and (iv) rental caskets.
- Ⓒ The cost of the cremation process should be included in the charge for an immediate or “direct cremation.” There simply cannot be an immediate cremation without a cremation. The services and merchandise included in both immediate disposition options should be standardized for easy “shopping.”
- Ⓒ Any mark-up on Cash Advance items should be disclosed with the actual amount to be charged. The tepid “We charge you for our services in obtaining. . .” is not an adequate disclosure.
- Ⓒ Cemeteries, monument dealers, and casket sellers should also come under the Funeral Rule. Given the mounting abuse, there is a need to protect a consumer's rights for all funeral-related purchases.
- Ⓒ The price for embalming should be disclosed when seeking permission to embalm.
- Ⓒ Vendors selling vaults or caskets should be restricted from making “preservative” or “protective” claims.

Some of these suggested changes have already been made by a few funeral homes, and there is no evidence indicating that these options will increase the cost to providers.

(3) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on funeral providers subject to its requirements? (a) Has the Rule provided benefits to such funeral providers?

The Funeral Rule imposes no significant burdens or costs on funeral providers. There is no evidence to suggest that the Commission was incorrect when it wrote in 1982: “The only potentially ongoing compliance costs would be those involved in updating the price lists, providing the general price list for retention to customers, and retaining records for a period of one year. There is no reason, however, to believe that these costs would be anything more than minor.” 47 Fed. Reg. 42260.

Indeed, trade journals report that the Funeral Rule has made it easier for a funeral director to know how to charge for a funeral, with the various components now itemized. [See Attachment #2, posting on AOL funeral bulletin board re the Rule.] The cost of a funeral continues to grow by 5.4% per year or more, in spite of the Rule, much faster than the general rate of inflation. [See Attachment #3, Funeral Price Information per NFDA; Attachment, #4 from August 1996 edition of THE DIRECTOR; #5 from June 1996 AMERICAN FUNERAL DIRECTOR; and Attachment #6 from the May 17, 1999 edition of *Funeral Monitor*.]

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on funeral providers subject to its requirements? (a) How would these changes affect the benefits provided by the Rule?

No changes should be made to the Funeral Rule in this regard. The cost of complying with the Rule is minimal.

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

New York is the only state with a significantly different general price list (“GPL”) format. FAMSA does not find the New York format consumer-friendly or particularly useful. Many New York funeral homes include both the FTC wording and pricing structure as well as the NY structure, which makes informed consumer choice — the touchstone of the Funeral Rule — difficult. [See Attachment #7, GPL from Riverside Memorial Chapel, in New York City.]

Eighteen states have adopted the Rule—in whole or in part—by reference or verbatim. They are: Arizona, Florida, Georgia, Maine, Minnesota, Nevada, New Jersey, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia and Wisconsin. We believe that the remaining states should do so to make it more enforceable on a state level. There are few adequate statutory provisions in most of those states for the issues covered by the Rule, making the continuing involvement of the Commission in protecting consumers absolutely vital.

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

Almost every funeral home now owns a fax machine, frequently used for submitting obituary information or for seeking and obtaining authorization for cremation. We believe that a General Price List should be

made available via fax as well as by in-person requests. This is likely to be substantially less expensive for the provider than sending via mail, which many funeral homes do voluntarily now. In the case of an expensively-produced GPL on, say, colored vellum paper, it would probably be less expensive to fax than to hand out, too. It would also be less expensive than answering price information item-by-item if a person were calling from out-of-town on the funeral home's 800 number. A consumer can learn a great deal more from seeing the GPL in its entirety, as there may be charges one might forget to ask about. With families often scattered in remote locations but struggling to make funeral or pre-need arrangements for elderly relatives, complete price information is critical. At least seven of the more than 200 consumers that have contacted FAMSFA to complain about funeral homes in the last three years had difficulty getting price information from a funeral home in another state. Faxing should be in addition to, not replace, existing price availability.

Similarly, funeral homes that have sites on the World Wide Web should be required to post their GPL somewhere on the site. [See Attachment #8, MORTUARY MANAGEMENT, February 1999.]

(7) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on small funeral providers subject to its requirements? (a) How do these burdens or costs differ from those imposed on larger funeral providers subject to the Rule's requirements?

There is no significant difference in the cost of compliance for funeral homes of different sizes. As the Commission held in 1982, the cost of ongoing compliance with the Funeral Rule is "minor." 47 Fed. Reg. 42260. A printed price list is a normal cost of doing business. Just as a restaurant needs a menu regardless of the size of the restaurant, so, too, does a provider of funeral goods and services need a general price list.

(8) To what extent are the burdens or costs that the Rule imposes on small funeral providers similar to those that small funeral providers would incur under standard and prudent business practices?

One and the same. As noted by industry sources, consumers are beginning to exercise informed consumer choice by shopping around for funeral goods and services.

(9) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small funeral providers? (a) How would these changes affect the benefits of the Rule? (b) Would such changes adversely affect the competitive position of larger funeral providers?

No changes should be made to the Funeral Rule for this purpose. The cost of complying with the Rule is minimal, regardless of the size of the provider.

(10) How, if at all, has the Rule affected the relative number of consumers who contact more than one funeral home before deciding which one to use?

The Wirthlin study commissioned by the trade association FAMIC (not FAMSAs) in 1995 indicated that close to 90% of the public did not shop for a funeral. Based on both first and second choices, 53% pick a funeral home that served someone else in the family in the past, 33% use the nearest funeral home, and 11% pick a funeral home based on ethnic or religious affiliation. This survey did not openly suggest price as a factor, although it could have been mentioned by a small number and classified as “other,” or been a factor for those who refused to answer. [See Attachment #9 (Figure 6) and Attachment #10 (Question 3BA) from the Wirthlin study.]

We believe that this is beginning to change. The funeral industry believes so as well. [See Attachment #1, MORTUARY MANAGEMENT, April 1999.] When U.S. NEWS AND WORLD REPORT mistakenly reported in March of 1998 that a list of low-cost providers was available from the FAMSAs office, we were swamped with calls. In areas where a local consumer group or reporter has done a price survey that became public information (as has happened in the last few years), such surveys, according to callers to FAMSAs, have been extremely helpful in reducing funeral expenses. As a result of surveys, lower-cost providers have enjoyed business growth in both Austin, Texas and New York City, for example. [See Attachment #11, AMBIS survey as posted on the Internet by the local newspaper.] In fact, the publication of surveys means that consumers need not personally contact more than one funeral home to benefit from the Funeral Rule: Consumer groups and media outlets are putting pricing information in the public domain.

(11) How, if at all, has the Rule benefitted consumers by:

(a) Alerting consumers to the importance of price information and ensuring that they obtain such information at the critical point of choosing a provider?

Consumers are beginning to utilize the information made available as a result of the Funeral Rule to shop around prior to choosing a provider, largely spurred by recent media articles or the price surveys done by local consumer groups. Membership in the funeral and memorial societies doing price surveys and publicizing them has grown significantly in years in which surveys were done. In Vermont, for example, membership has been growing every year at the rate of 20-25% since price surveys began in 1994. [See Attachment #12, from the St. Louis society.] The survey is now a benefit of membership in many FAMSAs associations. Other funeral and memorial societies make such information available to the public at large.

Consumers who have become alarmed after a recent and costly funeral account for many of the calls to FAMSAs. These consumers plan to shop for their own funerals and are relieved to hear that price information is readily available. The concept of shopping for a funeral—and the idea that there might be a significant difference from one funeral home to the next—is relatively new to many who call us. These consumers fit the profile identified in the Wirthlin study, and indicate that consumers are beginning to take advantage of the consumer choice made possible by the Funeral Rule.

(b) Providing information about different purchase options?

Consumers are benefitting from different purchase options required by the Funeral Rule. The GPL is still confusing to many funeral shoppers, however, and the format from one funeral home to the next can make comparisons difficult. [See Attachments #13-#17, sample GPLs from California, Michigan, Tennessee and Virginia.]

Package pricing continues to frustrate consumers. Different providers apply their own rules for pricing — if a consumer wants an “immediate burial” with a “graveside service,” can she simply add together those two charges for a total cost? Or will the funeral director price everything a la carte for a much higher price the minute something extra is added? FAMSA has evidence that funeral directors are employing the latter tactic, especially in cases where their non-declinable “basic services” fee is higher than their “immediate burial” fee. This is so even though the Funeral Rule requires that the non-declinable basic services fee be included in — and presumably, therefore, less than — the immediate burial fee. In the case of the following attachment, the lower fee for “Receiving Remains” (plus graveside) was not used—even though this was a ship-in. [See Attachment #18, a GPL from Virginia and a companion statement of Funeral Goods and Services Selected.] Requiring certain package options is helpful to those seeking minimal services and should be continued; some refinement and standardization is needed, however. This is discussed further in question 28.

(c) Protecting consumers from injurious misrepresentations?

We believe that the Funeral Rule has reduced the number of injurious misrepresentations made to consumers. Certain misrepresentations continue to plague the industry, however. Almost ten percent of the complaints logged by FAMSA concern misrepresentations of state law by providers of funeral goods and services. Furthermore, consumers are still being sold “protective” caskets. While the wording of such protective statements refers to what a seal keeps out, the implication is that by keeping out such elements, the body will be preserved. That is not the case, and the Commission should amend the rule to make sure that providers of funeral goods and services do not create the impression for their customers that the body of a loved one can be protected or preserved. [See Attachment #19. Such wording is found on GPLs nationwide (especially at Loewen-owned funeral homes). Attachment #20, January 1999, MORTUARY MANAGEMENT. See also, Attachment #21, the casket chapter in *Caring for the Dead*.]

(d) Requiring authorization prior to embalming?

The industry has made large strides in complying with embalming authorization requirements, although continuing enforcement by the Commission is necessary. Too many funeral providers still misrepresent the law, however. They claim, for example, that embalming is required when crossing state lines. In fact, only three states (Alabama, Alaska, and New Jersey) have such a requirement. Three other states (Idaho, Kansas, and Minnesota) require embalming when a common carrier is used.

Private family viewing was refused at one funeral home because the body was not embalmed and nearly refused for the mother of a dead infant at another. These tactics should not be tolerated by the Commission.

Many consumers who decline to authorize embalming are being held responsible for unnecessary charges imposed by funeral providers. Some funeral homes—notably those owned by Service Corporation International (“SCI”) — are imposing a refrigeration fee (often equal to the cost of embalming) after only six to eight hours when embalming is not authorized by the customer, even though that refrigeration may not be necessary. [See Attachment #22, SCI GPL.] In circumstances where embalming is not authorized and refrigeration is necessary, it should be treated as a cost of doing business and factored into the available options that the customer may select. In very warm weather, even an embalmed body may need to be refrigerated (or air conditioned) until the time of services if there is to be a delay of 48 hours or more.

As referenced in response to Question 2, and in keeping with the spirit of the Funeral Rule the price for embalming should be disclosed by the Funeral Director when he or she seeks permission to embalm. There should be no surprises for a purchaser of funeral goods and services when the time comes to pay the bill.

(e) Prohibiting providers from conditioning the purchase of a wanted item on the purchase of an unwanted item?

Regrettably, providers have gone to great lengths to thwart the unbundling requirements that were so central to the Funeral Rule at its inception. Industry practices are discussed in detail in our response to question 24 concerning the non-declinable fee and questions 26 and 27 concerning third-party casket purchases.

(12) How have prices changed (in total and for specific funeral goods and services) since the Rule was amended in 1994? To what extent, if at all, are these changes attributable to the Rule?

According to responses received from the approximately 900 funeral homes that volunteered to share pricing information with the NFDA, figures for an “average funeral” are as follows:

	Total	Non-declinable fee	% of total
1994	\$4,077	\$823	20.2%
1995	\$4,456	\$952	21.3%
1996	\$4,624	\$1,025	22.1%
1997	\$4,782	\$1,079	22.6%

(Because NFDA does not ask respondents to identify themselves, FAMSA does not know whether the prices charged by funeral home chains are included in these averages.)

As the industry's own figures show, in addition to deceptive package deals, the major development in funeral pricing since the 1994 amendments has been the more than 30 percent growth of non-declinable fees between 1994 and 1997. In Vermont, the Memorial Society had conducted a state-wide price survey immediately prior to the amended Rule in 1994 and did one again the next year. The non-declinable fee for "basic services of staff" — already inflated in 1994 — rose 14.7% after "overhead" was permitted by the amendment. There was little or no change for other prices on most GPLs, even though the word "staff" had been added to various options, and one could have reasonably expected some costs to shift. With the larger non-declinable fee, the total for a one-of-everything funeral rose by 5% and for a direct cremation by 9%, according to the 1995 Vermont survey. [See Attachment #23.]

Other member societies have conducted price surveys as well. FAMSA is submitting a summary of the average costs, for the years 1992 through 1999, for direct cremation, immediate burial, the non-declinable fee and a full funeral. [See Attachment #24.] The figures were compiled from more than 3,000 funeral home contacts from around the nation. The majority of these surveys were conducted in 1998 and 1999. [Individual surveys may be found in Box #1, which includes copies of GPL's for some and a cover spreadsheet for each group.] These show the dramatic impact that the non-declinable fee has had on prices. The "basic service charge" for planning the funeral is now more than 40 percent of all service charges. Furthermore, the costs for minimum services are increasing at an annual rate of approximately ten percent.

FAMSA's surveys also demonstrate that the quarter of the population that is using chain-owned mortuaries are likely to pay between \$6,000 and \$10,000 for an "average" one-of-everything funeral. The non-declinable fee is likely to be 50 percent of the service charge. Low-cost caskets may not be available at these funeral homes or are displayed in undesirable colors, such as "grasshopper green," according to two consumers that contacted FAMSA. [See Attachments #25, Ventura County survey; #26, Atlanta survey; #27, a letter of complaint; #28, an e-mail complaint; and #29, Statement of Funeral Goods and Services for \$10,000 "no-frills" funeral.]

(13) Have the relative prevalence of: (a) ground burials; (b) cremations; (c) above-ground entombment; or (d) other dispositions, increased or decreased since the Rule was amended in 1994? To what extent, if at all, has the Rule influenced these changes?

FAMSA has no basis on which to judge that the increase in the cremation rate since 1994 has been influenced by the amended Rule. In fact, the increasing cremation trend began prior to 1994, according to the statistics from Cremation Association of North America as reported in *THE AMERICAN CEMETERY*, 1998. [See Attachment #30; also #31, *Death Care Business Advisor*, June 1999.] There is no evidence suggesting that the relative prevalence of ground burials, entombments or other dispositions has been impacted by the Rule either.

(14) How, if at all, since the Rule was amended in 1994, have the following factors changed?

(a) The number, size, and type of providers of funeral goods and services in the industry?

The explosion of the retail casket business since 1994 can be reasonably attributed to the no-handling-fee provision of the amended Rule. While few such entrepreneurs existed in 1994, approximately 200-300 such stores are now in existence, according to the National Casket Retailers Association.

While the consolidation of the funeral home industry is not attributable to the Rule, 15 percent of funeral establishments are now owned by publicly-traded funeral chains. Trade journals indicate that these chain-owned funeral homes conduct 25% of all funeral business. In parts of Florida, Texas, and California, very few independent providers remain. In New York City, SCI owns a majority of ethnic funeral homes, including six of the seven funeral homes commonly identified as “Jewish” funeral homes). This presents a troubling new concern for regulators — ethnic monopoly. [See Attachment #32, report from the New York City Department of Consumer Affairs, 1999. Available on-line at <http://www.ci.nyc.ny.us/html/dca/html/pressfuneral.html>]

(b) The ability of new providers, both traditional and non-traditional, to enter the industry?

Although the 1994 amendment eliminated casket-handling fees, funeral homes continue to resist price competition from new providers. Of the 221 complaints concerning funeral homes logged by FAMSA, 32 — nearly 15 percent — were casket-related.¹ For example, in response to the emergence of casket retailers, some funeral homes have subjected consumers to dirty tricks — including smeared dirt, scratches and dents — and disparagement when the consumer has chosen to purchase a casket elsewhere. [See Attachment #33, letter and companion documents from a displeased consumer.] Some funeral homes have tried to make the purchase of a casket from another retailer as inconvenient as possible by requiring consumers to be present at the time of delivery. In some cases, the pressure has been so severe that consumers have chosen to cancel the outside casket purchase. [See Attachment #34, from a casket retailer.]

Discount package pricing is now a more prevalent tactic, and is promoted by NFDA and seen on recent GPLs. Funeral Directors significantly increase the itemized prices on the GPL, and offer a discount package only to those who choose to purchase a casket from the funeral home. [See Attachment #35, a sample GPL showing preferential pricing, and Attachment #36 & #37, candid on-line admissions for recouping lost profit.] It appears that at least 20 casket retailers — of a mere 200 to 300 — were not able to survive and have gone out of business in two years or less. [See Attachment #38, *Death Care Business Advisor*, April 1998; #39, *Fox Market Wire*, December 1998.]

¹ These letters and e-mails, together with phone logs, will be made available to the Commission upon request.

(c) What types of non-traditional entrants have appeared in the industry, and how are they different from traditional providers?

In addition to casket retailers, a number of funeral “brokers” have set up shop. Some casket stores operate as brokers, too. A broker may negotiate a lower price from a specific funeral home for a specific customer, or the broker may have done a price survey from which the customer can shop for a provider, casket, or other merchandise and services. Unlike the nonprofit consumer groups that carry on similar activities as a public service and which charge a one-time fee of \$25 or so to cover printing expenses for their educational materials, brokers charge consumers a fee of several hundred dollars for personal profit. [See Attachments #40 and #41, promotional materials for First Light and Eulogy International, respectively.]

In addition, cemeteries, monument dealers, and florists are now selling caskets. The purchase of a casket was almost always made at the funeral home until the enactment of the Funeral Rule.

(d) Mergers and other types of consolidation in the funeral industry?

In addition to the growth in ownership of funeral homes by funeral giants, one of the most troubling recent developments in the funeral industry is vertical integration. Increasingly, one company owns the funeral home, the cemetery, the florist shop, and also sells the memorial markers. While there may be some physical convenience in one-stop shopping, price surveys indicate that the cost at such locations are significantly higher. [See Attachment #42, report of AMBIS survey; Attachment #43, Arlington, VA survey; Attachment #44, survey of 12 Oklahoma cemeteries; and Attachment #45, MORTUARY MANAGEMENT, March 1998.]

With vertical integration, the incentive is greater than ever to discourage consumers from purchasing portions of a funeral or cemetery package elsewhere. Vertical integration also provides some businesses with a way around protections for funeral consumers. For example, in Virginia cold-call solicitation is forbidden by statute for pre-need funeral sales. No such ban exists for cemetery sales, however, and once a salesperson is face-to-face with a consumer considering a cemetery purchase, the funeral transaction can be promoted, too. [See Attachment #46, pages 105-6 in *Caring for the Dead: Your Final Act of Love* for excerpts from internal memoranda from a Virginia funeral home owned by SCI discussing this tactic.] By combining a cemetery and funeral purchase, the seller can write up certain merchandise (such as the vault and casket) or services (the crematory, for example) on a cemetery contract, and less will be required to be placed in trust for a pre-need sale. The payments may not be refundable when written on a cemetery contract, even though they may have been refundable under a funeral agreement. [See Attachment #47, page 196 in *Caring for the Dead: Your Final Act of Love* for one example in Arizona. Similar problems exist in other states.]

(e) Profits of funeral industry members?

As reported by the NFDA, funeral profits after owner salary has been taken was 8.9% in 1997, down marginally from prior years. [See Attachment #5.]

The pattern of rising prices at mortuaries that have purchased by chains has been well-documented by the executive director of the North Texas Memorial Society, who contributed his research to *60 Minutes* in 1997. The *60 Minutes* segment on chain-owned mortuaries verified that prices were increasing in Florida, as well. [See Attachment #48, letter from Pierson Ralph with attached notes on price changes.] The annual reports of the three largest chains showed gross profit margins of 22.5% to 49.8% in 1997. The Funeral Rule provides some counterbalance to this trend, however. As consumers became aware of high prices, profits decreased. [See Attachments #49 and #50, 1998 annual reports for SCI and Stewart, respectively.]

(15) How, if at all, has the Rule affected the cremation industry? Should the Rule be amended to include within its scope unfair and deceptive practices by crematories, if any?

FAMSA's experience has been that many persons who choose cremation do so for financial reasons. Because itemized and total costs are available in advance, the Rule has likely been helpful in this regard. Nevertheless, the Rule should be amended to reach cremation industry practices.

Commercial cremation-only businesses rarely provide consumers with a document that resembles a GPL. This is not surprising, since many simply do not offer such services as Forwarding Remains, Embalming, or Limousines. For most cremation businesses, price information is readily available in the brochures that they do distribute, but not in exactly the same format that a consumer is likely to encounter on a GPL. These differences make it difficult for consumers to comparison shop. [See Attachments #51-53, sample brochures from cremation businesses.]

Many cremation enterprises are operated by funeral establishments that use an entirely different price list for cremation customers. Various disclosures are often absent, including the disclosure of a price for an alternative container. Standardizing the GPL would be of enormous help to consumers trying to make sense of the GPL under difficult circumstances.

In addition, evidence suggests that those offering cremation services are engaged in certain practices that are contrary to the intent of the Funeral Rule, including:

- **Failing to offer a low-cost alternative container.** Many of the cremation establishments run by SCI are failing to offer a low-cost alternative container. The lowest-priced alternative container that they make available is an unfinished wood box for \$295 or \$395. [See Attachment #54, sample GPL from SCI funeral home in Grandview, MO.] Almost all funeral homes offer a cardboard or cardboard-and-wood container, which usually costs less than \$100. The wholesale cost for a cardboard or cardboard and wood container is between \$10 and \$25.

- **Imposing a charge for “Preparation for ID Viewing” or for the actual ID viewing itself.**

Identification viewing of bodies prior to cremation is now being required by more and more funeral homes. In some cases, funeral homes are imposing a charge for “Preparation for ID Viewing” or for the actual ID viewing itself. [See Attachments #55 through 63, sample GPLs from California and Connecticut.] One SCI funeral home imposed a three-day storage charge in lieu of ID viewing. There is evidence to suggest that ID viewing is a manipulative tactic to sell more expensive cremation containers. [See Attachment #64, pages 124-5, *Caring for the Dead*.] If identification viewing is required by state law or regulation, it should be included in the cremation fee.

Finally, it should be obvious that before any services are provided for which a crematory or a funeral home will charge, *including removal*, the personnel should be certain of the identity of the body being taken to the funeral home. We believe each body should be tagged with identification at the place of death (or by the coroner/medical examiner's office when the death is under investigation) prior to “removal” for final disposition by the funeral home or transport service.

Whether it's an actual increase in body mix-ups at mass-production preparation facilities or better reporting of such problems, it is certainly devastating to a family to learn that a body that was supposed to be prepared for burial was cremated instead—even when ID viewing was involved. Therefore, body identification prior to removal should be mandatory.

(16) To what extent are providers of funeral goods and services complying with the Rule overall, and with each of its component requirements?

In 1994, little more than a third of funeral providers were determined to be in compliance with the Funeral Rule. 59 Fed. Reg. 1592, at 1597. In areas where there have been “sweeps” or well-publicized surveys by consumer groups, the proffering of a GPL in a timely way is improving.

Nationwide, it is not uncommon to see a non-declinable basic service fee that is larger than the sum of other services in packages in which the non-declinable fee is already “included.” [See Box #1, a survey of more than 1,000 GPLs from around the country. The cover spread-sheet for each bundle indicates the frequency for such “magical math.”] Sometimes the basic fee is simply altered elsewhere on the GPL. [See Attachments #65 & #66.]

Consumers continue to report to FAMSA that they are being told that certain purchases are required by state law when that is not the case. This is frequently the case with burial vaults and embalming. In fact, ten percent of the complaints concerning funeral homes logged by FAMSA stemmed from misrepresentations of state law. Some consumers have been informed that only a funeral director may provide funeral services, even when that is not the case. One customer, who informed the funeral director that he wished to be buried only in a cloth shroud (as is the practice in Israel), was told that his request would violate OSHA policy. The SCI script to use with cremation customers states that “there are specific laws on where you can bury cremated remains,” even though only two states require that written permission of the landowner be sought prior to a burial or scattering of ashes. In all fifty states,

the family is legally entitled to possession of cremated remains and can keep them on the mantelpiece if they wish.

(17) What difficulties, if any, are providers of funeral goods and services experiencing in complying with the Rule?

The requirements of the Funeral Rule are simple. Compliance, even begrudging compliance, appears to grow more common each year.

Nevertheless, price surveys conducted by local funeral and memorial societies indicate that compliance with the Rule continues to be an issue. Irregularities in presentation or missing disclosures are not infrequent, especially at independent funeral homes. [See Attachment #25, summary of surveys indicating that 744 out of 1023 GPLs were not in full compliance.] A 1998 survey of 220 of Connecticut's more than 300 funeral homes showed that only eight were in full compliance with the Funeral Rule.

Box #1 includes individual surveys, many of which include a copy of the GPLs. A lower-case "no" in the FTC compliance category means that the error was perceived to be minor. Omitting the description of the specific alternative container supplied, for example, was a common mistake. An upper-case "NO" indicates what is probably a more substantial violation of the Rule: an illegal handling fee for consumer-supplied caskets, illegal changes of wording in required disclosures, or the outright failure to disclose some options.

Some funeral providers maintain that they never received the green booklet distributed by the FTC in 1994 on Complying with the Funeral Rule, and are therefore unaware of the Rule's specific requirements.

(18) How has the National Funeral Directors Association's Funeral Rule Offenders Program ("FROP") affected compliance with the Rule, if at all?

Given the small sampling in sweeps done by the FTC, it would be impossible to determine how the FROP program might affect any funeral homes other than those that have been audited. Test shoppers visited approximately 40 Columbus, Ohio funeral homes, but there are more than 1,200 funeral homes in the state. Obviously, most of the 1,160 Ohio funeral homes not visited by the test shoppers are outside the Columbus area. Funeral and memorial society surveys in other parts of Ohio show that there is still evidence of noncompliance, even after the FTC "sweep." [See Attachment #67, Toledo survey and report, also in the Ohio section of Box #1.]

(19) Do consumers who receive itemized price information at the inception of the arrangements conference tend to spend less on funerals than those who receive such information later?

FAMSA has neither collected nor encountered any formal data addressing this specific question. Obviously, for some consumers price is not an issue. In fact, for some a display of expensive purchases may even be important. Others may be so distraught they will not take the time to read the material or discern what the various options mean.

But for those consumers for whom cost is even a modest factor, it seems logical that early information can influence, and does influence, the total cost of the funeral. [See Attachment #68, Funeral Related Options and Costs, (page 3) The Funeral Information Project, Center on Aging, Kansas City, KS.]

(20) Do consumers who make pre-need arrangements spend less on funerals than those who do not? If so, why? Does receiving price information at the inception of a pre-need arrangements conference contribute to decreased spending? Does it encourage or facilitate comparison shopping?

People pick the funeral options that are meaningful to them, whether they are making that decision at-need or pre-need. Many people are willing to finance large expenditures to have the kind of funeral that they want — such as burial rather than cremation, or including a viewing “because it’s expected in this community.” In areas where there has been media coverage regarding prices, funeral homes experience more “shoppers.” On the whole, however, the industry has been very effective in convincing the public how much a funeral will cost. Even insurance companies reinforce the high cost of funerals, now aiming for \$7,000 to \$10,000 in burial benefits.

There is some evidence that consumers who make pre-need arrangements may be paying more than at-need customers. An SCI sales manual states that preneed salespeople must take in \$1.50 in preneed sales for every at-need dollar or risk losing employment. [See Attachment #69, a page from the 1997 SCI Sales Reference Guide.] In these situations, the arrangements environment is steered toward meeting the salesperson’s quota, not meeting the need of consumers.

(21) Should the requirement that itemized price lists be given to consumers at the beginning of discussions about funeral arrangements be modified? If so, how? What would be the relative costs and benefits of such a modified provision?

No. The funeral home staff has no way to gauge whether cost is an issue for any specific family and, due to social pressures, customers are unlikely to ask to see the price list at the beginning of the discussion. Some people would find it embarrassing to admit that price is a concern. Ensuing conversation may imply agreement to certain services without full knowledge of the expense. It is important to continue to make price information available early in the discussion. FAMSA has received complaints from consumers who have told us that the GPL was not delivered in a timely fashion; we’ve

never been contacted with a complaint that the funeral director “foisted” the GPL on a customer. [See Attachment #70 & #71, consumer complaints.]

The cost of the change would be very high. Informed consumer choice cannot occur if the choices are made in a vacuum and the general price list surrendered only after choices have been made. It is difficult to see any benefits that would arise from the change.

(22) Should the Commission expand the definition of “funeral provider” in order to bring non-traditional members of the funeral industry within the scope of the Funeral Rule's coverage? Are consumers being harmed by the current limitation on the scope of the Rule's coverage?

It is important for all funeral-related vendors to be included in the FTC Funeral Rule.

Consumers do not compartmentalize when they make arrangements for a funeral. A funeral begins at the time of death and involves transactions with a variety of vendors before final memorialization is done. If any of these transactions goes sour, consumers suffer both emotionally and financially.

FAMSA strongly urges the Commission to make all funeral-related vendors answerable to the central tenets of the Funeral Rule. All sellers of funeral goods or services should (i) make prices readily available for all goods and services offered, (ii) disclose consumer rights, (iii) be prohibited from any tie-ins of unwanted charges, and (iv) maintain honesty in the transaction. These are hardly burdensome requirements for ethical vendors.

Expanding the Rule to cover cemeteries is especially important. Of the more than 350 complaints received by FAMSA during the past three years, more than a third concerned cemeteries.² Ten percent of those who lodged complaints concerning cemeteries had difficulty obtaining information; 20 percent had complaints concerning vaults and markers — most concerning “tie-in” pricing; 17 percent complained about legal misrepresentations or other unethical conduct; 11 percent had complaints related to pre-need sales; and seven percent of the complaints concerned veterans. The remaining 35 percent of the complaints were general in nature — several concerned price increases for opening and closing services required for lots purchased at an earlier time.

To give an example, one veteran was lured to a cemetery by a “free lot” promotion, with half-price for family members. He was shown a lot area where the price, although halved, was more expensive than the least expensive lot elsewhere in the cemetery. Because the Funeral Rule does not apply to cemeteries, the salesperson had no obligation to supply a price list of all the lots available. In addition, that salesperson told the veteran that the national cemetery nearby was full — which was untrue — in a

² These letters and e-mails, together with phone logs, will be made available to the Commission upon request.

dishonest ploy to capture the sale. [See Attachment #72-74, sample consumer complaints; Attachment #75, *Seattle Times* article on the difficulty in getting telephone information; and Attachment #76, Chapter 14, *Caring for the Dead*.]

A handful of states are moving to regulate cemeteries, suggesting a need for consumer protections in this area. For example, South Carolina is reviewing cemetery problems with an eye to reestablishing its cemetery board. Cemetery complaints were rampant enough to move the Maryland and Virginia legislatures to create new cemetery boards within the last two years, joining only ten other states with cemetery boards. Of the 38 states without a cemetery board, regulation is delegated to another state agency in only 17, which is often inadequate to meet the need. The Real Estate Board in Arizona, for example, rarely responds to cemetery complaints, according to a three-inch-thick report from the executive director of the Funeral Board there. This is representative of the complaints FAMSAs get from other states. [See Attachment #77, Arizona study of cemetery problems (which also includes the Maryland cemetery study), Attachment #78, the Virginia cemetery study dated February 16, 1999, and Attachment #79, *Richmond Times Dispatch* story, March 22, 1998.] Based on evidence provided by disgruntled consumers, the U.S. Senate Committee on Aging is investigating cemetery problems, and a report is due this year from the Government Accounting Office.

The International Cemetery and Funeral Association (ICFA) claimed recently in one of its monthly publications that nonprofit and religious cemeteries should be exempt from any federal regulation. There is no legitimate basis to exclude any entity from honoring basic consumer rights. Moreover, it is difficult to determine what should be categorized as a “nonprofit cemetery” or “religious cemetery.” SCI has made an arrangement with the Catholic church to run their Dallas area cemeteries. In Oklahoma, all cemeteries by statute must be run not-for-profit, yet SCI and Loewen own approximately 25 cemeteries in that state. The city of Tempe, Arizona has sold its cemetery to a private individual, and a West Coast municipality is considering a contract with a for-profit company to run its cemeteries. Loewen has been hired to run the diocesan cemeteries in Tucson, and Stewart Enterprises is building mortuaries on the grounds of the Catholic cemeteries in Los Angeles. At the Pittsburgh diocesan cemeteries, if a salesperson does not meet the rigorous sales quotas, he or she can lose medical benefits according to one salesperson who left because he could no longer handle the pressure. Now the Pittsburgh diocesan cemeteries also want to sell funeral insurance, and have asked area funeral directors to send over their GPLs. Although the Pittsburgh Catholic Cemetery Association had a consent agreement with area monument dealers to permit competitive monument selling, the monument dealers have filed suit against the cemetery association charging renewed interference in their sales. [See Attachment #80, article from *Death Care Business Advisor*.]

The legislative history of the FTC Act yields broad jurisdiction to include corporations that operate for pecuniary benefit, even if they are *nonprofit* for federal income tax purposes. From the Brief for the Respondent in *California Dental Association v. Federal Trade Commission*, FTC staff writes, “The Commission has sensibly read the Act as permitting it to intervene when a nonprofit entity advances its members' economic interests in the commercial world.”

Given the increasing number of cemetery complaints, we believe that there is a need to include all cemeteries under the Funeral Rule, both for-profit and non-profit.

Finally, although FAMSA receives fewer complaints about independent monument dealers and casket retailers, we have received complaints regarding those items when sold by a consolidated vendor or funeral/cemetery chain.³ For example, one Rock of Ages sales coach suggested to dealers that the retailer tell consumers that a one-foot-by-two-foot flat marker is \$1,000—because most members of the public won't know how much to expect and will get out their checkbooks. An attending retailer was horrified—his normal price for such a marker is \$395. [See Attachment #81, discussion on the Rock of Ages stockholders' bulletin board from those who heard the sales ploy.] Accordingly, even monument dealers should be required to supply a price list of goods and services offered, from which a consumer can shop. It should also disclose veterans' benefits.

(a) What definition should be used to delineate those entities and individuals subject to the Funeral Rule?

Entities that sell merchandise or services for body disposition and memorialization to the public should be subject to the Funeral Rule. This would include funeral homes, cemeteries, crematories, direct disposition services, shipping services, monument dealers, vault dealers, casket sellers, and funeral brokers—whether at-need or pre-need, and any insurance vendor that mentions a funeral provider by name as the designee for payment.

(b) What are the costs and benefits of broader definitions?

There should be little cost to the providers beyond costs associated with standard business practices. New entities subjected to the Funeral Rule would bear the same start-up costs borne by funeral homes in 1984. As the Commission held then, even those start-up costs are insignificant compared to the benefits offered by informed consumer choice.

(23) Should non-traditional providers of funeral goods and services be subject to only certain provisions of the Funeral Rule?

All general provisions of the current Rule should be maintained, with appropriate modifications for those businesses that do not offer all types of services or products.

(a) If so, to which provisions should they be subject?

A General Price List should be defined for the goods and services offered by each type of vendor. The price list should carry the name of the state agency that handles consumer complaints for those dealing

³ These complaints will be made available to the Commission upon request.

with each given vendor. [See a similar recommendation by the Virginia Cemetery Board, Attachment #78.]

Cemeteries should carry a disclosure on their price lists: “The cemetery fee for the installation of a vault, memorial, or monument will be charged at the same price, regardless of where or from whom you make the purchase. All memorials receive equal care.” (Some families are being told that the cemetery will not maintain a marker or monument purchased elsewhere, including a veteran's marker.)

Because veterans have been a continuing target of burial misinformation over the years, an additional disclosure should be required on the cemetery price list: “If you are a veteran, you and your spouse are entitled to a free grave site in a national cemetery, although some prefer the convenience of a local cemetery. The veteran (not the spouse) is entitled to a free marker for any unmarked grave regardless of the cemetery. To receive more information on veterans funeral and burial benefits, call 800-827-1000.” That telephone call is automatically routed to the regional Veterans Administration office of the state from which the call is made. Even ICFA is mindful of the various "vet scams" that have been perpetrated in the past, and has tried to address that in its code of ethics. As a trade organization, however, it has no authority to enforce the recommended practices. [See Attachment #82, ICFA Code of Ethics section concerning veterans.]

Cemeteries should be restricted from requiring the purchase of an urn vault for the burial of cremated remains. Unlike a casket vault, there is no maintenance or safety factor involved.

As discussed in response to Question 2, any vendor selling vaults or caskets should be restricted from making “preservative” or “protective” claims. A disclosure, as used in California, should be required: “There is no scientific or other evidence that any casket [or vault] with a sealing device will preserve human remains.” [See Attachment #83, California statute.]

(24) Does the prohibition on more than one non-declinable fee reduce barriers to competition and increase consumer choice?

(a) Has this prohibition been effective to ensure that consumers can choose and pay for only the individual goods and services that they desire? (b) Has this prohibition been effective to protect consumers' right to decline unwanted goods and services?

Although there is only one non-declinable fee, that fee is a significant barrier to customers seeking a lower-priced funeral. With a non-declinable fee that on average constitutes 40-50% of the service charges and almost 25% of the total funeral bill, the ability to make selections from the available options that will yield significant saving is limited. At some funeral homes the pricing pattern is especially egregious — a non-declinable fee of \$1,495 with only a \$75 charge for viewing and another \$150 for the funeral. That leaves no real choice for a consumer who wants to limit expenses.

FAMSA has received countless letters, e-mails and phone calls complaining about the cost of a funeral.⁴ One woman, for example, was quite satisfied to pay for the several thousand dollars in services she selected and spent another \$4,000 for her father's casket. But she was outraged at the \$1,695 non-declinable "basic" services fee, for which she felt she got nothing.

(c) What are the benefits conferred upon consumers or competition by this prohibition?

With the permitted non-declinable fee, consumers have seen little benefit, with funeral inflation running five to ten percent annually over the past ten years depending on the options selected, well above general inflation.

(d) What costs or other burdens has this provision imposed upon providers of funeral goods and services?

None. Funeral providers have made use of the single non-declinable fee to thwart the intention of the Funeral Rule to foster informed consumer choice and to induce price competition.

(25) What new fees, prices, goods or services have emerged in the sale of funeral goods and services since the Rule was amended in 1994?

FAMSA has collected evidence of GPLs with a charge for preparation for ID viewing or for the actual ID viewing. Few consumers would realize this is a declinable charge. Refrigeration charges — when embalming is not chosen — have escalated dramatically. They are far out of line with a one-time mark-up on the actual cost. SCI-owned funeral homes frequently have a stated policy of requiring embalming or refrigeration after only six or eight hours.

With the increasing cremation rate, funeral homes are offering a variety of cremation packages, to appropriately dispel the notion that a "direct cremation" is the only cremation option. This is another reason to require a separate cost for cremation on the GPL, for consumers who want to put together their own set of options.

Funeral brokers are offering to do the shopping for consumers — for a fee, with promises of cost-saving to the consumer.

(26) Have the 1994 amendments been effective in prohibiting casket handling fees? If so, what benefits or costs have resulted from these amendments?

⁴ These letters and e-mails, together with phone logs, will be made available to the Commission upon request.

Discount packaging has replaced handling fees, for the most part, as the preferred method to eliminate price competition. The trend to discount packaging has meant that consumers are realizing less of the benefit from this 1994 amendment than they should.

One built-in handling fee can sometimes be found in the “Immediate Burial” prices. Often, the price charged for services-plus-a-minimum-casket is less than the total for the services (if the provider supplies the casket) plus the least expensive casket available from the funeral home. [See Attachment #84.]

(27) How widespread is it for funeral providers to offer substantial discounts on funeral packages that include a casket from the funeral home?

Discount packaging has been recommended by the National Funeral Directors Association and is now seen in GPL packets around the country.

(a) To what extent does such discounting tend to restrict consumers' choices?

With high *a la carte* prices and discount packaging available only to consumers purchasing a casket — any casket — from the funeral home, funeral homes have effectively undercut any saving that a consumer might have realized by shopping elsewhere for funeral merchandise. [See Attachment #35, sample GPL showing discount and preferential pricing.] Price competition cannot emerge if funeral providers are permitted to continue pricing in such a manner that no rational consumer of funeral goods and services would choose to purchase a casket from a third party.

(28) Should the requirement for a General Price List be modified? If so, how?

(a) Are there any new fees, prices, goods or services which should be added to the General Price List requirements?

Yes. Each of the four items discussed below are occasionally found on funeral home price lists today, suggesting that these are sound recommendations that would not be a burden for the industry.

1. Should the Rule require that the price of private viewing without embalming be included on the General Price List?

Yes. Some funeral directors already offer private family viewing without embalming and may not even charge for such a service. By adding this item to the GPL, consumers who had received this service for free in the past will now be charged. But FAMSA has no argument with funeral homes being reimbursed for the use of their facilities and services — that is appropriate. The problem is that such a choice is not readily ascertained from the current GPL, if the GPL is the only source of information for a family or consumer survey. By adding “private family viewing without embalming,” those who are waiting for scattered relatives to arrive might choose that over a public viewing to meet the family's need

for closure. In Vermont, after such an option was added by new regulation in 1997, the price for private viewing and public viewing was often listed at the same price. However, the family does not have to pay for embalming when a private viewing is selected, saving several hundred dollars. This option also addresses the needs of those who have a personal aversion to the embalming process but who may, for personal or cultural reasons, want to sit with the body for a period of time. Private viewing supports that which has been truly “traditional” in funeral practices, especially when making allowances for ethnic variations among the many cultures represented in the U.S. Embalming is rarely used in other countries.

Private viewing should be a per-hour charge; the family can then determine the amount of time that they need.

2. Should the Rule require that the price of donating a body to a medical school be included on the General Price List?

It should be a bit of an embarrassment for all of us who participated in the formulation of the Funeral Rule that “bequeathal” as another method of body disposition was not covered in the original Rule. All states now have laws addressing anatomical donations. Of course this should be added to the Funeral Rule provisions. Some medical schools pay for all expenses, while others require the family to pay for transportation. Still others require the family to pay for arterial embalming and transportation. But is the amount the medical school will pay enough to cover the funeral home charges? One Iowa family that asked the funeral home about body donation was never told that the funeral home wanted an additional \$1,000 “professional services” fee until after the arrangements had been made. In Vermont, a consumer called FAMS headquarters to ask which funeral home he would need to call in order to have his wife's body delivered to the medical school. Even though we had done a state-wide price survey just months before, we were unable to answer the caller's question. After a few rushed phone calls, however, we learned that there was a \$600 difference between the highest and the lowest prices, with one funeral director not sure what he would charge. This funeral director's figure changed each time we informed him of what others would charge for the same service.

There are only a few states without a medical school. States like Delaware have medical schools nearby in other states. Other states, such as Wyoming, have an arrangement with regional universities. Some states, such as California, New York, and Texas, have multiple universities to which a body may be donated. Some form of price disclosure would conform with the purpose of the Rule. A disclosure should be added to the GPL stating, “Some or all of this fee may be paid by the medical school. It is the responsibility of the family to determine how much if any will be covered at the medical school selected.”

3. Are the Rule's requirements [(Section 453.2(b)(4)(ii)(C)] to disclose on the General Price List the price for direct cremation effective to prevent deception regarding the amount a consumer will pay to have a funeral provider dispose of a body by cremation?

Should the Rule also include an express requirement that the disclosed price of “direct cremation” include the actual price to have a body cremated?

It is simply impossible to have a Direct Cremation without a cremation. What rational consumer would think to ask the crematory or funeral home if there was an additional charge? Honest funeral directors are at a competitive disadvantage when they do include the cost, because then their prices appear higher than competing funeral homes. This hampers informed consumer choice.

In our experience, cremation customers tend to shop more frequently than those picking other funeral options. It is impossible to know the actual cost of a Direct Cremation if some funeral homes include the cost of the cremation and others do not. It is unfair for a consumer to find out after arrangements have been made that \$200 or more has been added to the “Cash Advance” items for the crematory fee. Even if a funeral director uses one crematory on one side of town for some customers, and another crematory on another side of town for other customers, it certainly is not difficult to note multiple prices (i.e. “in Washington County,” and “in Orange County”). Likewise, the cost of all permits should be included in the cost of the Direct Cremation, such as the medical examiner's fee if applicable.

The crematory fee(s) should also be listed separately on the GPL, however. Many consumers currently believe that if they wish to have a body cremated, then they have no choice other than the Direct Cremation. For those families planning a viewing and funeral with the casket present, the crematory fees may be important when trying to compare cemetery costs for body burial with the costs for the interment of cremains.

4. Should the Rule require that the price of renting a casket in connection with a cremation be included on the General Price List?

Yes. Rental caskets — with a removable insert — are now widely available in the funeral industry. Given the increasing cremation rate, these rental caskets should be made available to consumers. While there is likely to be substantial saving for the consumer in terms of cost, there is plenty of profit margin for the funeral home with multiple usage and common charges (100% mark-up on first rental is not unusual). There is no reason to cremate an elaborate casket unless the family requests such an arrangement. Furthermore, the placement of rental casket charges on the GPL would eliminate the problem of funeral directors informing customers that rental caskets are against the law when such is not the case. For example, one family unnecessarily spent \$3,000 for the least expensive wood casket on display as the result of such misinformation. Michigan is the only state in which there is a law against the reuse of caskets, and that law does not apply to rental units, according to the executive director of the Michigan Funeral Directors Association. With cremation a popular choice for disposition, business-minded morticians are eager to offer additional services prior to cremation. The placement of rental caskets on the GPL would help them achieve such an objective.

(b) Are there any fees, prices or services which should be deleted from the General Price List?

The single greatest price increase since the Rule went into effect—especially after the 1994 amendment—has been in the non-declinable “basic services of staff (and overhead).” This non-declinable fee has undermined the purposes of the original Rule “to promote full itemization and informed consumer choice.” 59 Fed. Reg. 1592, at 1605. In 1982, the Commission asserted that:

. . . to the extent that itemization allows consumers to choose less than traditional funerals, the increased demand for less than full funerals may stimulate innovative new services and allow the market to respond. As a result, the long run effect of itemization is expected to drive all prices down to the competitive level.

47 Fed. Reg. 42260, at 42298.

However, funeral prices won't go down if a substantial non-declinable fee is permitted to offset the astronomical casket prices of yore. The non-declinable fee has simply become another form of “bundling.” If a funeral home is allowed to put all overhead in the non-declinable fee, someone picking minimal services is paying for staff and facilities that were not used, negating the core purpose that was supposed to be guiding both the original and the amended Rule, “to permit itemization so that consumers may select only the funeral items they desire, and decline unwanted items.” 59 Fed. Reg. 1592, at 1608. The same rationale that lead the Commission to eliminate multiple non-declinable fees and package-only pricing dictates that all non-declinable fees be eliminated. See *Id.* (noting that a second non-declinable fee would “signal a return to package pricing, where all consumers would pay for the use of all facilities [and presumably overhead costs] irrespective of the degree to which consumers use them.”)

If the funeral home were selling goods and services at wholesale cost, the need to recoup overhead in a distinct non-declinable fee might be justified. In practice, however, consumers are being charged twice for overhead. Almost everything in the description of what the “basic” fee covers⁵ now belongs elsewhere on the GPL, in general overhead mark-up for specific goods and services:

- Ⓒ Conducting the arrangements conference. The time it takes to show your wares and describe the services you offer is a cost of doing business.
- Ⓒ Planning the funeral. This should be part of the options selected and will be different for a funeral with a viewing compared to a direct cremation.
- Ⓒ Consulting with family and clergy, and coordinating with the cemetery, crematory, or other third parties. Again, these tasks are necessarily included in the other options on the GPL.

⁵ “Basic services” are defined in the Rule as the “services, not to be included in prices of other categories in [the GPL] that are furnished by a funeral provider in arranging any funeral...” 16 C.F.R. § 453.1(p).

- C Obtaining necessary authorizations and permits. Certain permits may be necessary for removal, and should be part of that charge. Cremation permits should be part of the cremation charge.
- C Shelter of remains. A funeral home would not be able to provide its services, such as embalming, if it didn't have custody of the remains. A sheltering fee should be permitted only after an extended period of time, possibly beginning on the fourth or fifth day after death.

The intent of those who drafted the Funeral Rule was that the non-declinable fee would be modest. See 59 Fed. Reg. 1592, at 1602. Indeed, the Commission required a disclaimer on the GPL stating: "This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains." 16 C.F.R. § 453.2(b)(4)(iii)(C)(1).

After examining a multitude of GPLs from around the country, FAMSA has detected a clear pattern of abuse of this fee — "magical math," if you will. For example, if a non-declinable fee totals \$1,495, it cannot be included in a direct cremation charge of only \$895, or a forwarding charge of \$695. Furthermore, if the cost of an immediate burial is only \$1,195, and the family would like to add a \$250 graveside service, the total should be only \$1,445. But in one example, the bill suddenly jumped because the itemized prices — beginning with the "basic" charge, plus removal, plus the hearse to the cemetery — added up to \$2,295. [See Box #1 and summary sheets attached to GPLs and surveys from around the country.]

FAMSA knows of no other industry that sets a non-declinable fee *unrelated* to the goods and services selected by the customer. Each item on a hospital bill, to give only one example, must represent a specific service or item that was actually supplied.

FAMSA understands that eliminating a non-declinable "basic" fee will shift costs. For those choosing a "full funeral," the bottom line is not likely to change. But for a cost-conscious consumer, the elimination of the non-declinable fee should yield a more real choice. Instead of an average charge of about \$350 each for embalming, viewing, and the funeral service, those charges might rise to \$800 or \$1,000. At that point, a consumer might decide that there would be significant saving to skip embalming and viewing; at least the choices are within the consumer's control. This will never be the case so long as the non-declinable fee accounts for a large portion of the funeral bill.

(c) Are there any other revisions that should be made to the current provisions in the General Price List?

Yes.

An "Estate and Records Fee" should be added, as a declinable option, for assistance with social security forms, applications for Veterans Administration benefits, insurance forms, estate filings, and obtaining a death certificate after transfer of the body to the funeral home. In many areas, medical

personnel are notoriously uncooperative in completing final paperwork in a timely way. Even though, by law, a death certificate is required in most states prior to removal, most ignore the law when a funeral director arrives to pick up a dead body. Later, funeral home staff must be sent to the doctor's office, or to chase the doctor down on his or /her day off to get the necessary signature and cause of death. Obviously, many families will not want to bother with any of this at a time of grief, but medical personnel seem to become more responsive when the family is involved. The possibility of saving several hundred dollars by declining an "Estate and Records Fee" should be a consumer's option, however. Many family members are quite capable of handling all other paperwork as well, and having "something to do" can be therapeutic. The "Estate and Records Fee" could be a fixed fee or a per-hour charge.

The goods and services included in the package items for forwarding, receiving, immediate burial, or cremation should be standardized to aid consumers who choose to comparison shop.

A GPL should be printed in a type size of eleven points or greater. If the print is too small to read, the consumer has no access to the information.

The current disclosure for Cash Advance items is inadequate. The disclosure that "We charge you for our services in obtaining . . ." is unacceptable. Just as is true for all other parts of the funeral contract, the amount of the service charge should be disclosed prior to providing the services. One gentleman was shocked to discover that he had been charged \$200 for the funeral home to fax four copies of the obituary he'd written for his wife. (The papers in his town run obituaries at no cost.) Others will be happy to pay service fees, just for the convenience, but they should be disclosed in advance.

(d) For any change made in response to this question, what, if any, would be the costs and benefits to consumers and to funeral providers?

Anything that is non-declinable takes away consumer choice. While eliminating a "basic" charge, costs can be expected to shift, and some consumers will see little change in the bottom line for the price of the funeral they select. For the more cost-conscious consumers, each of the suggested amendments represents an opportunity for saving. We live in an information age when consumers are increasingly becoming active funeral shoppers. Our suggestions will help to make more accurate information available and, to a small degree, increase the range of options.

With a growing cremation rate, funeral providers are already dealing with a changing funeral economy. Dissatisfied consumers will demand or find new options. What is good for consumers will be good for the industry.

(29) The Rule applies to both pre-need and at-need funeral arrangements. Should pre-need and at-need consumers be treated differently? If so, why?

Both pre-need and at-need consumers need the provisions of the Rule, with some additional considerations pre-need. (See our response to question 30.) As discussed in our response to Question 20, pre-need salespersons are under significant pressures to increase sales.

(c) Can a funeral provider readily distinguish between a pre-need and an at-need customer or will this complicate compliance with the Rule?

There should be no difficulty in determining the difference between pre-need and at-need purchasers.

(30) Are there widespread unfair or deceptive practices occurring with respect to the pre-arrangement of and pre-payment for funerals by consumers? What are these practices? How could these practices be remedied? Are these remedies within the Commission's authority and jurisdiction? Would the benefits to consumers likely to result from such remedies outweigh the likely costs to funeral providers or other industry members?

The pre-need funeral and cemetery business is a multi-billion-dollar-a-year industry. Sales quotas and hard-sell tactics are common, especially among the conglomerate companies. Independent funeral homes are feeling a pressure to compete or lose their expected market share to aggressive sales teams. This is a change from the more passive practice of waiting for a consumer inquiry. Those who have studied bereavement find that a person is the most vulnerable in the two-month period after a loss. And yet this is the very time-frame in which pre-need sellers descend on families to make new arrangements. For some, bereavement (and vulnerability) may continue for a year or more. [See Attachment #85, *Grief Counselling and Grief Therapy*, by William Worden, Ph.D., pages 18, 34, and 35; and Attachment #86 GriefNet Bibliography reference to Dale Lund's *Older Bereaved Spouses*.] Hospices that offer follow-up bereavement services are now beginning to serve families for 18 months after a death.

More than 15 percent of the cemetery complaints received by FAMSA related to pre-need arrangements. To give one example, at the time of her husband's death, one 80-year-old-widow, accompanied by her niece, made arrangements for a cremation bench and memorial at a nearby cemetery; total cost for the two of them was about \$4,000. Two weeks later, when no niece was in sight, the sales rep showed up at the widow's home in the trailer park and talked the elderly woman into body burial—with a \$3,900 solid copper casket and a \$6,900 solid copper vault; total for the new arrangements was nearly \$20,000. Nine days later, her funeral plan had grown to over \$45,000 for something called a “Family Estate” with \$6,000 worth of statues, and a full-body marker that cost over \$10,000. He left her alone for almost a month before returning to up-grade the sale a third time. Then he sold her a \$37,000 casket and a \$50,000 private family mausoleum. In a matter of less than two months, the widow had spent or committed herself to over \$125,000 in funeral arrangements. (The niece now has guardianship, and a court case is pending.) [See Attachment #87, chapter on pre-need, “The Body Snatchers: Pre-need Greed,” in *Caring for the Dead*, pages 155-166.]

We're not sure what authority and jurisdiction the FTC has to thwart such inappropriately aggressive sales practices, but an increased cooling-off period might be one way to begin. Industry will likely cry that such a delay will wreak havoc with paying sales commissions. Given that consumers will eventually die and they'll get the business anyway, what's the rush? One approach, common in the legal profession, is to prohibit personal contact for a set period after a prescribed event such as a car accident. Similar protection for the vulnerability of the bereaved might work to discourage predatory preneed sales contacts.

When most people make preneed funeral arrangements, they don't usually think they're going to change their minds. But people move, remarry, die while travelling, or decide on cremation instead of body burial, now that cremation is more accepted. One provision that should be added to any preneed contract is disclosure of the penalties for cancelling or transferring such a contract. [See Attachment #88, *KIPLINGER'S PERSONAL FINANCE MAGAZINE*, May 1999, pages 78-84 on cemeteries; and #89, *Elder Law Journal* article, "Preneed Funeral Plans: The Case for Uniformity."] In Mississippi, only 50% of a preneed funeral contract is placed in trust. How much will the buyer get back if moving to another state? Only a few states require that 100% of all principal and interest be refunded on a cancelled or transferred funeral purchase. Cemetery purchases are far less changeable. With constructive delivery frequently permitted for cemetery-related merchandise, the consumer is likely to get no refund for a casket vault when changing plans to cremation.

While such a disclosure will not deter a sale to someone who is clear about his or her funeral plans, it should appropriately give pause to others.

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The original FTC studies indicated that the average adult arranges for just one funeral in a life-time. Although the increase in preneed funeral purchases is changing this for about 25% of the population—many of whom just handled the funeral for another, there is only one funeral experience, only one chance to get it "right" when a person dies.

FAMSA is encouraged by the Congressional attention to funeral consumer issues, notably by the Senate Committee on Aging. We look forward to the contribution that the GAO study may yield for the concerns that have been raised. We appreciate the thoughtful way in which this review is being conducted and would like the opportunity to participate in the Roundtable discussions to be scheduled. Thank you.

Respectfully Submitted,

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