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Via Airborne Express

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

**RE: Telemarketing Rulemaking – Comments –
FTC File No. R411001**

Dear Sirs:

Enclosed please find six copies of the Comments of the National Funeral Directors Association on the Notice of Proposed Rulemaking to Amend the Telemarketing Sales Rule. We have also enclosed a computer disk with our Comments on it.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely yours,

T. SCOTT GILLIGAN

TSG/dlk
Enclosures

cc: Christine Pepper
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**BEFORE THE
FEDERAL TRADE COMMISSION**

**COMMENTS OF THE
NATIONAL FUNERAL DIRECTORS ASSOCIATION
ON THE
NOTICE OF PROPOSED RULEMAKING
TO AMEND THE
TELEMARKETING SALES RULE
16 CFR PART 310**

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I. INTRODUCTION

The National Funeral Directors Association (“NFDA”) submits the following comments to the Federal Trade Commission (“FTC”) pursuant to the January 22, 2002 Notice of Proposed Rulemaking to Amend the Telemarketing Sales Rule, 16 CFR ~~Part~~ 310 (the “TSR”).

NFDA is the nation’s largest funeral service organization. It has over 13,000 members ranging in size from small family-owned funeral homes to large publicly-held corporations. The Mission Statement of NFDA directs the Association to provide advocacy to help its members enhance the quality of services to the consumer. A vitally important component of that mission is to protect the consumer whenever he or she deals in any aspect with the death care industry. It is for that purpose NFDA submits the following comments to the FTC on the proposed amendments to the TSR.

11. FACE-TO-FACE EXEMPTION

NFDA’s comments are directed to a very specific portion of the TSR—the face-to-face exemption found in Section 310.6(c) of the TSR. By letter dated April 16, 2001, NFDA informed the Commission that its Policy Board approved a resolution directing “DA to seek the repeal of the face-to-face exemption. That exemption permits certain unscrupulous sellers of preneed funeral and cemetery goods and services to mislead consumers into attending sales appointments without disclosing to them that the real purpose of the appointment is to sell preneed funeral and cemetery goods and services.

As explained in the letter of April 16, 2001, it is extremely rare for a preneed sale to be transacted entirely through telephone contact between the seller and the purchaser. Although many preneed sales may begin with a telephone solicitation of the consumer, in nearly every case the seller and the purchaser will consummate the purchase of the funeral goods and services

during a face-to-face meeting. Therefore, the face-to-face exemption provided for in Section 310.6(c) will exempt the initial telephone solicitation of the preneed funeral consumer from the protections of the TSR.

In the August 23, 1995 Statement of Basis and Purpose which accompanied the promulgation of the TSR, the FTC justified the face-to-face exemption based on its observation that “the occurrence of a face-to-face meeting limits the incidence of telemarketing deception and abuse”. While a face-to-face meeting may provide some protection against abuse, it does not eliminate or reduce deception that may be employed by a dishonest telemarketer in the initial phone call to arrange the face-to-face meeting. If a consumer is contacted by an unethical telemarketer and duped into meeting with a preneed sales agent without knowing that the purpose of the meeting is to sell preneed goods and services, the consumer is deceived. Yet the deception is not prohibited by the TSR because the subsequent face-to-face meeting exempts the initial phone contact from the Rule.

Although the overwhelming majority of preneed sellers are ethical and honest in offering goods and services to consumers, there are sellers who will use duplicitous tactics to set **up** the initial meeting between the consumer and the preneed sales agent. For example, they may tell the consumer that they are eligible to receive a free “veterans” grave plot. Another tactic is to offer free kits to assist the consumer in documenting personal records. Other consumers are lured to cemetery sales offices by claims that the cemetery needs to update records and is requesting the consumer’s assistance. In none of these initial telephone contacts is the consumer informed that the actual purpose of the face-to-face meeting is to sell preneed goods and services to the consumer.

Since one of the primary purposes of the Telemarketing Act is to require telemarketers to “promptly and clearly disclose in all sales calls to consumers that the purpose of the call is to sell goods and services”, it is apparent that the face-to-face exemption is undermining congressional intent to protect preneed consumers. Because preneed telemarketers escape the coverage of the TSR due to Section 310.6(c), dishonest marketers are free to dupe consumers into face-to-face meetings with high pressured preneed sales agents without informing the consumers that the actual purpose of the meeting is to sell them funeral and cemetery goods and services.

While the FTC did not agree with the recommendations of NFDA and the Funeral Consumers Alliance, Inc. to repeal the face-to-face exemption, it has put forth in the Notice of Proposed Rulemaking several modifications to the face-to-face exemption which would provide some consumer protection. Specifically, the Commission is proposing that a telemarketer that is covered by the face-to-face exemption would still be prohibited from engaging in the following practices:

- Threatening or intimidating a customer or using obscene language;
- Blocking Caller ID information;
- Causing a telephone to ring or engaging a person in conversation with the intent to annoy, abuse or harass the person called;
- Denying or interfering with a person’s right to be placed on a “do-not-call” registry;
- Calling persons who have placed themselves on a central “no-call” registry list maintained by the FTC or calling persons who have placed their name on that seller’s “do-not-call” list; and
- Calling outside time limits allowed by the Rule.

¹ See FTC Telemarketing Sales Rule Request for Public Comment (February 23,2000).

While NFDA supports the FTC's efforts to make telemarketers covered by the face-to-face exemption subject to some of the protections afforded by the TSR, we are very concerned that the FTC did not recommend that those telemarketers also comply with the oral disclosure requirements provided by Section 310.4(d). That section of the TSR requires a telemarketer to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call the following information:

- 1) The identity of the seller;
- 2) The purpose of the call is to sell goods and services;
- 3) The nature of the goods or services; and
- 4) That no purchase or payment is necessary to be able to win a prize or to participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chance of winning.

The disclosures required by Section 310.4(d) are precisely the type of safeguards which will prevent the duplicitous solicitation practices of unscrupulous preneed funeral and cemetery sellers. NFDA believes that any consumer being solicited to attend a sales meeting should be told upfront who the seller is, the purpose of the sales meetings, and the goods and services which will be offered to the consumer during the sales meeting. This will allow the consumer to make a rational decision as to whether he or she wishes to attend the meeting.

Making telemarketers covered by the face-to-face exemption comply with Section 310.4(d) of the TSR will not impose any additional costs or burdens on telemarketers. The disclosure of the seller's identity and purpose of making the telemarketing call is basic

information which any ethical telemarketer should already be disclosing to consumers. There is no cost nor regulatory burden involved in making such a disclosure.

11. CONCLUSION

In summary, **NFDA** supports the FTC's proposal to make telemarketers covered by the face-to-face exemption subject to the list of consumer protection requirements set forth above. In addition, to prohibit unethical and duplicitous telephone solicitations by a few unscrupulous preneed telemarketers, NFDA is requesting the FTC to make telemarketers covered by the face-to-face exemption subject to the oral disclosure requirements set forth in Section 310.(4)(d).

Respectfully submitted,

NATIONAL FUNERAL DIRECTORS
ASSOCIATION

March 22, 2002

By: _____



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