



Comments of Consumer Reports
Funeral Rule Regulatory Review
16 CFR Part 453, Project No. P034410

June 15, 2020

Consumer Reports submits these comments in the above-referenced proceeding, to support requiring funeral homes that have websites to prominently post full price information on those websites. This simple step will greatly enhance price competition, resulting in significant savings for bereaved families, while reducing unnecessary additional stress. We also recommend additional clarifications to strengthen the Funeral Industry Practices Rule.

As the Commission recognized in its 1975 staff report¹ and in issuing the Rule in 1982, consumers must generally make decisions regarding funeral arrangements under stressful circumstances that require them to make quick decisions. This leaves them more vulnerable to deceptive and high-pressure sales tactics by funeral homes that, prey on the family's grief over the loss of their loved one, and steer them to more expensive choices. And it too often results in the family being charged for costly products and services that they did not want and would not have chosen if they had had time to reflect and consider purchases under less stressful circumstances. This vulnerability is compounded by the fact that many consumers will make funeral arrangements only once in their lives, and have no frame of experience when dealing with an experienced funeral home.

These stresses are no less present today, and unfortunately, the prospect of needing to make funeral arrangements has taken hold in the anxious minds of even more Americans in the current COVID crisis. And in that respect, the Commission's review of this Rule is particularly timely.

Surveys and reports conducted jointly by the Funeral Consumer Alliance (FCA) and Consumer Federation of America (CFA) have extensively documented continuing misleading practices and lack of transparency on the part of funeral homes that warrant clarifications and

¹ Federal Trade Commission, Bureau of Consumer Protection, Division of Special Projects, Funeral Industry Practices: Proposed Trade Regulation Rule and Staff Memorandum, August 1975, *available at* [https://books.google.com/books?id=Zjvz8BQmBpYC&pg=PP3&lpg=PP3&dq=United+States,+Federal+Trade+Commission,+Bureau+of+Consumer+Protection,+Division+of+Special+Projects,+%E2%80%9CFuneral+industry+practices:++Proposed+trade+regulation+rule+and+staff+memorandum+\(August,+1975\)&](https://books.google.com/books?id=Zjvz8BQmBpYC&pg=PP3&lpg=PP3&dq=United+States,+Federal+Trade+Commission,+Bureau+of+Consumer+Protection,+Division+of+Special+Projects,+%E2%80%9CFuneral+industry+practices:++Proposed+trade+regulation+rule+and+staff+memorandum+(August,+1975)&).

updates to the Funeral Industry Practices Rule.² As a founding member of CFA, we find these surveys and reports compelling.

We recommend a number of updates and clarifications to the Rule, discussed below, to improve its effectiveness in protecting grieving families.

Online Availability of Full Itemized Price Lists

First and foremost is an improvement that was not available when the Rule was conceived and issued. At that time, the best that could be done to give consumers information about available options and their prices was to require, as the Rule currently does, that the itemized price list be furnished on request when a consumer visits the funeral home, and always furnished at the outset of any discussions about funeral arrangements. And that the funeral home provide information from the price list to any consumer who calls with regard to funeral arrangements or offerings.

That has changed dramatically. The marketplace now offers a key asset that it did not then: a widely available internet on which websites can be easily accessed and emails can be easily sent and received. This makes it possible to fulfill the consumer protection purposes of the Rule in a way that was simply not possible before.

The Rule now requires all funeral homes to have price lists prepared and available to give to consumers on request. For a funeral home that has a website, it is a simple matter to require that the list be prominently posted there.

We recognize that, while ideally all funeral homes would have websites, inevitably some will not, perhaps especially smaller funeral homes, and perhaps funeral homes so well established in their communities that they have not seen the need to invest in creating one. For those funeral homes, it is a simple matter to require that the list be available in digital form, and to require that it be promptly emailed to any consumer in response to request or to an inquiry about products and services.

The list should continue to be available as under the current Rule, in hard copy to give to any consumer who comes to the funeral home. But with website and email availability, this current required option may become rarer in use.

These updates will create no significant additional costs for funeral homes, but will provide significant benefits to consumers. Indeed, they should actually make providing the required information easier for funeral homes, especially responses to many telephone inquiries,

² E.g., Joshua Slocum, Stephen Brobeck, The Relationship between Funeral Price Disclosures and Funeral Prices: A California Case Study, February 2020, <https://funerals.org/wp-content/uploads/2020/02/California-Funeral-Home-Pricing-Report-2-10-20.docx>; Joshua Slocum, Stephen Brobeck, Cremation Services: Highly Variable and Misleading Pricing, Lack of Disclosure, and Violation of Federal Rules, <https://funerals.org/wp-content/uploads/2020/02/2016-9-12-FCA-CFA-Cremation-Report.pdf>.

as the funeral home can just ask for the consumer's email address and send the list that way, rather than having to discuss it at length.

Other Recommended Improvements

Clarify what is required to be in the list

There are a number of ambiguities in the Rule's current description of what is required as to format, organization, and detail in the price list. We recommend clarifying this, to specify that the price list be a *full* list of prices for *all* funeral-related products and services that a consumer might ultimately purchase. And to ensure that the list is organized in a consumer-friendly way that provides the buyers with the information to make decisions about what they truly need and whether a bundle of products and services is appropriate for them.

The price list should be required to include any products and services to be obtained from third parties and treated as "cash advance" items by the funeral home. It should include crematory fees, and other fees and charges of whatever kind that the consumer would pay to the funeral home. It should be organized and formatted so as to be easy for the consumer to read and find prices for the range of options for any product or service.

The list should begin with clear and prominent introductory statements --

- that the consumer has the right to choose among options and to choose individual products and services separately,
- that, unless specified otherwise, no product or service is required by law, and
- that any product or service that *is* required by law will be accompanied with a specific reference to the statute or ordinance that requires it, and a clear and specific description of the circumstances under which it is required.

The current rule requires similar disclosures regarding legal requirements for embalming but a lack of clarity has led funeral homes to interpret it in a way that is not useful to consumers. The rule has been read to be satisfied by a confusing general boilerplate reference to embalming being required "under certain circumstances" – without specifying what those circumstances are, or whether it is required by law or just by funeral home policy.

The rule should further specify that the options for each product or service should be organized separately, with each product or service grouped separately as to the options, with the prices shown for each option.

Combined packages of products and services could still be offered, but each should specifically describe what it includes, and the packages should be shown in the list only after the options for individual items are shown. The introductory statement could alert the consumer that combined packages are shown at the end of the list. Similarly, if there are specialty products and services that do not easily fit within a general set of options, they could be added and described

at the end of the list. And the general statement of a “basic services fee” that is always charged should be replaced by an itemized list of what those basic services are.

Clarify when the list is required to be provided

The Rule currently requires that the list be provided upon request when a consumer visits the funeral home, but that prices for certain products and services need to be provided only in response to a specific inquiry. With the recommended updates, it will be possible to require, and should be required, that the all-inclusive price list be available on any website and provided in the email promptly sent in response to any inquiry about funeral products and services, or about funeral arrangements more generally. A consumer should not have to already be aware of a specific product or service and ask about it in order to receive information about the prices for providing it. There should never be hidden or surprise costs.

Disclose the names of funeral homes found not in compliance

After 35 years under the Funeral Rule, there is no need to keep confidential the names of homes that the Commission has found to be not in compliance or against which it has brought enforcement action. These should be made public, as other enforcement actions generally are.

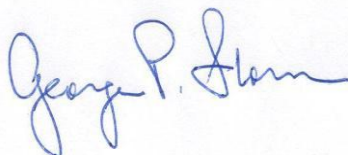
Require cemeteries to make similar disclosures

With reports of a similar lack of transparency at cemeteries, the Commission should require similar disclosures of prices for the products and services they offer.

Conclusion

The updates and clarifications we recommend would improve the ability of consumers in this stressful situation to make informed decisions before meeting with the funeral home, would reduce the likelihood of purchasing unnecessary -- or unnecessarily costly -- funeral products and services, would increase healthy incentives for funeral homes to compete on prices they offer, and would facilitate the Commission’s ability to monitor compliance.

Respectfully,



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