determine whether they are met or it is unreasonable to meet one or more of them. Today's final action does not establish a new regulation.

F. Review Under Executive Order 13132

Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's determination and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Because DOE is determining that a private and local government fleet AFV program is not ''necessary'' under section 507(e) and therefore is not promulgating such a program, no significant impacts upon State and local governments are anticipated. The position of State fleets currently covered under the existing EPAct 1992 fleet program is unchanged by this action.

G. Review of Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires each Federal agency to assess the effects of Federal regulatory actions on State, local and tribal governments and the private sector. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published in the **Federal Register** a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820). Today's final determination does not contain any Federal mandate, so the requirements of the Unfunded Mandates Reform Act do not apply.

H. Review of Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's determination will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review of Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final determination under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. A determination that a private and local government fleet AFV acquisition program is not ''necessary'' under EPAct 1992 section 507(e) does not require private and local government fleets, suppliers of energy, or distributors of energy to do or to refrain from doing anything. Thus, although today's determination is a significant regulatory action, the determination will not have a significant adverse impact on the supply, distribution, or use of energy.

K. Review Under Executive Order 13432

Executive Order 13432, Cooperation Among Agencies in Protecting the Environment With Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines, 72 FR 27717 (May 16, 2007) requires DOE to work with DOT and EPA when conducting rulemakings that could be considered to affect emissions. In particular, this Executive Order requires that ''the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall'' conduct the rulemaking jointly with other agencies, to the extent permitted by law; consider, as appropriate, laws, information, and recommendations of the other agencies; exercise the agency's authority effectively; and obtain concurrence or other views by the other agencies throughout the rulemaking process. In meeting this requirement, the Department consulted with both DOT and EPA during development of the proposed determination. The analysis reviewed by the DOT and EPA is essentially the same as that presented in the final determination.

VIII. Approval by the Office of the Secretary

The issuance of the Private and Local Government Fleet Determination has been approved by the Office of the Secretary.

Issued in Washington, DC, on March 6, 2008.

Alexander A. Karsner

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–5143 Filed 3–13–08; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 453

Regulatory Review of the Trade Regulation Rule on Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission (the ''Commission'' or the ''FTC'') has completed its regulatory review of the Trade Regulation Rule on Funeral Industry Practices (''the Funeral Rule'' or ''the Rule''). The Rule sets forth preventive requirements in the form of price and information disclosures to ensure funeral providers avoid engaging in acts or practices the Commission has identified as unfair or deceptive acts or practices. Pursuant to the review, the Commission concludes that the Rule in its current form continues to be valuable to consumers, and the benefits of the Rule outweigh the costs. Because of insufficient support in the record, the Commission declines to propose amendments that some commenters advocated, namely to: expand the scope

of the Rule; eliminate the basic services fee of the funeral director; allow funeral providers to charge casket handling fees; prohibit discount funeral packages; require additional price and information disclosures on the various disclosure documents; and adopt additional regulations focused on contracts for funeral arrangements made on a pre-need basis. However, to further the Commission's understanding of this evolving industry, the Commission will continue to accept written comment and data, as described below.

ADDRESSES: Written comments should refer to ''Matter Number P984407—Funeral Rule - 16 CFR Part 453'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex K), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c), which requires that the comment be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Comments filed in electronic form should be submitted by visiting the Web site at *https://secure.commentworks.com/FTC/funeralrule* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/FTC/funeralrule* Web site.

If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/Privacy.htm*.

DATES: This action is effective as of March 14, 2008.

FOR FURTHER INFORMATION CONTACT: Monica Vaca, 202-326-2245 or Craig Tregillus, 202-326-2970, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission, as part of its oversight responsibilities, reviews its rules and guides periodically to seek information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Where appropriate, as in this review, the Commission combines such periodic general reviews with reviews seeking information on specific questions about an industry.

II. Background

The Funeral Rule was issued pursuant to the Commission's authority under Sections 5 and 18 of the Federal Trade Commission Act to proscribe deceptive unfair acts or practices.[1] The Commission adopted the Funeral Rule on September 24, 1982, and it became fully effective on April 30, 1984.[2] The essential purposes of the Funeral Rule are to ensure that consumers receive information necessary to make informed purchasing decisions, and to lower existing barriers to price competition in the market for funeral goods and services.[3] Subsequently, the FTC amended the Funeral Rule.[4] The Commission published the amended Funeral Rule on January 11, 1994,[5] and the amendments to the Rule took effect July 19, 1994. The Third Circuit subsequently affirmed the amended Rule following a challenge by funeral industry groups. *Pennsylvania Funeral Directors Ass'n, Inc. v. FTC*, 41 F.3d 81, 83 (3d Cir. 1994).

The current Rule specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) fail to furnish consumers with accurate price information disclosing the costs of each funeral good or service used in connection with the disposition of dead bodies; (2) require consumers to purchase a casket for direct cremations; (3) condition the provision of any funeral good or service upon the purchase of any other funeral good or service; or (4) embalm the deceased for a fee without authorization. The Rule also specifies that it is a deceptive act or practice for funeral providers to misrepresent the legal or local cemetery requirements for: (1) embalming; (2) caskets in direct cremations; (3) outer burial containers; or (4) purchase of any other funeral good or service. The Rule also prohibits misrepresentations that so-called ''cash advance'' items are provided to the consumer at the same price as that paid by the funeral provider, when such is not the case, or that any funeral goods or services will delay the natural decomposition of human remains for a long-term or indefinite time. The Rule sets forth preventive requirements in the form of price and information disclosures to ensure funeral providers do not engage in the unfair or deceptive acts or practices described above.

On May 5, 1999, the Commission published a request for comment on the Rule, 64 FR 24250 (''FR Notice''), as part of its continuing review of its trade regulation rules to determine their current effectiveness and impact. The FR Notice sought comment on standard regulatory review questions, such as what are the costs and benefits of the

[1] Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' Section 18 of the FTC Act, 15 U.S.C. 57a *et seq.*, and the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* permit the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a).

[2] The Rule had two effective dates. Certain portions became effective on January 1, 1984 and others on April 30, 1984. 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984).

[3] Funeral Rule Statement of Basis and Purpose (''SBP''), 47 FR 42260 (Sept. 24, 1982).

[4] Amended Rule, Advanced Notice of Proposed Rulemaking, 52 FR 46706 (Dec. 9, 1987). The Rule was amended as a result of a regulatory review and amendment proceeding.

[5] Amended Funeral Rule Statement of Basis and Purpose (''Amended Rule SBP'') 59 FR 1592 (Jan. 11, 1994).

Rule, what changes in the Rule would increase the Rule's benefits to consumers, how those changes would affect compliance costs, and what changes in the marketplace and new technologies[6] may affect the Rule.

The FR Notice also sought comment on several specific issues, including whether the Commission should amend the Rule by: (1) expanding the Rule's scope to include cemeteries, crematories, and third—party sellers of caskets, monuments, or other goods; (2) changing or eliminating the provision that allows funeral providers to charge a single non-declinable fee; (3) clarifying the ''casket handling fee'' prohibition; (4) revising the General Price List requirements; or (5) specifically addressing issues relating to pre-need sales of funeral goods and services. The FR Notice elicited 153 written comments.[7]

In addition to soliciting written comment on these issues, Commission staff held a public workshop on the Rule on November 18, 1999. Participants representing 24 different organizations discussed, in a roundtable format, whether there is a continuing need for the Rule, and, if so, how the Commission could improve the Rule.[8] Additionally, 13 individuals made statements, often relating their own personal experiences and beliefs, for the public record.[9]

III. Standard for Retaining, Amending, or Repealing a Rule

There is a presumption that the existing rule should be retained.[10] Indeed, a decision to retain any portion of the current Rule may be based upon evidence gathered during the original rulemaking and the Commission's subsequent enforcement experience, as well as evidence adduced during the current rulemaking.[11] As for changes to a rule, Section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B), states that ''[a] substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection.'' Thus, the standard for amending or repealing a section 18 rule is identical to that for any rule prescribed pursuant to section 18.

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

(1) Is the act or practice prevalent?[12]

(2) Does a significant harm exist?

(3) Would the rule provisions under consideration reduce that harm? and

(4) Will the benefits of the rule exceed its costs?

See Credit Practices Rule, 49 FR 7740, 7742 (Mar. 1, 1984).[13] Because of the ''potentially pervasive and deep effect'' of FTC Rules, *American Optometric Ass'n v. FTC*, 626 F.2d 896, 905 (D.C. Cir. 1980), the Commission carefully scrutinizes the record evidence to determine whether the record is reliable and provides sufficient support for undertaking an industry-wide rulemaking.

To analyze whether the Rule should be amended, repealed, or retained, the Commission has evaluated a number of factors, including the relative costs and benefits of the Rule, industry compliance, the effect on competition and consumer choice, and the adequacy of case-by-case law enforcement under sections 5 and 13(b) of the FTC Act to address existing problems that fall outside the Rule's scope. The record evidence from this review, as well as the record established in the two prior rulemakings, indicate that the current rule is adequately addressing the practices that the Commission found to be deceptive or unfair. Furthermore, the record here does not support proposals to repeal any portion of the Rule.

As to amending the Rule, the Commission has considered a number of factors. In order to justify embarking on a proceeding as time and resource intensive as a rule amendment proceeding under section 18, the Commission must assess the likelihood that the evidence in the regulatory review record, if developed further, will ultimately meet the rigorous standard articulated above. The Commission's assessment is that the regulatory review record amassed here is insufficient to justify initiating a rule amendment proceeding. The record here does not suggest that, were the Commission to initiate a proceeding to adopt specific amendments that various commenters have recommended, such a proceeding would likely develop evidence that could meet the applicable legal standard for amending a rule. As to the six changes to the Rule that some commenters advocated: (1) The Rule cannot be expanded to cover the substantial portion of cemeteries that are not-for-profit entities outside the jurisdiction of the FTC Act, and there is insufficient evidence that commercial cemeteries, crematories, and third-party sellers of funeral goods are engaged in widespread unfair or deceptive acts or practices; (2) The provision allowing funeral providers to charge a single non-declinable fee should be retained because it is fair to allow charges for the use of a funeral provider's services and facilities; (3) Casket handling fees tend to undermine the purpose of the Rule and should continue to be disallowed; (4) There is insufficient evidence that discount funeral packages, offered in addition to itemized services, cause injury to consumers; (5) There is insufficient evidence that adding disclosure requirements to those already included in the Rule is necessary to remedy any unfair practices, and indeed, additional disclosures could obscure essential information; and (6) There is insufficient evidence of widespread unfair or deceptive practices in the sale of pre-need funeral arrangements, and such contracts are already regulated by various state laws.

[6] By and large, the comments did not address how new technologies impact the industry and whether the Rule should be amended to reflect such changes.

[7] The commenters included funeral directors, cemetery representatives, third-party sellers, monument dealers, consumers, consumer organizations, memorial societies, trade associations, and regulators. The comments are cited as ''[name of commenter], Comment [designated number], at ___.'' For a complete list of the commenters, and the abbreviations used to identify each commenter, see Appendix 1. All comments are on the public record and are available for public inspection. The comments, and some of the attachments, are also available in electronic form at the Commission's Internet web site. *See http://www.ftc.gov/bcp/rulemaking/funeral/comments/index.html.*

[8] The transcript of the workshop is cited as ''[name of commenter], TR at ___.'' For a complete list of panelists, and the abbreviations used to identify each panelist at the workshop, see Appendix 2. Transcripts of the workshop conference are on the public record and are available for public inspection.

[9] For a list of individuals who made statements for the public record at the end of the workshop, see Appendix 3.

[10] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983).

[11] Amended Rule SBP, 59 FR at 1596.

[12] Indeed, the Commission may not issue a notice of proposed rulemaking unless it has ''reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'' 15 U.S.C. 57a(b)(3). The Commission may find prevalence where available information ''indicates a widespread pattern of unfair or deceptive acts or practices.'' *Id.* at 57a(b)(3)(B). The finding of prevalence will vary depending on the circumstances of each rulemaking. *See Pennsylvania Funeral Directors Ass'n*, 41 F.3d at 86-87. Herein, ''widespread'' is used interchangeably with ''prevalent.''

[13] *See also* 15 U.S.C. Section 57a(d)(1)(A)—(C) (requiring in the Statement of Basis and Purpose accompanying the rule a statement as to prevalence, the manner in which the acts or practices are unfair or deceptive, and the economic effect of the rule). *See also* Federal Trade Commission Organization, Procedures and Rules of Practice, 16 C.F.R. 1.14(a)(i)—(iv).

Therefore, the Commission has determined not to initiate a rule amendment proceeding at this time.

IV. Regulatory Review Comments and Analysis

A. The Record Supports Retaining the Rule

The comments almost unanimously expressed continuing support for the Rule, with most comments indicating that the Rule's benefits outweigh the costs imposed on funeral providers.[14] The record also indicates that a number of new entrants to the market, primarily in the area of casket sales, have brought about increased competition.[15] The Rule further benefits consumers by increasing their awareness of prices and options as factors to consider in making funeral purchase decisions. Comments indicated that the Rule promotes comparison shopping and ultimately may bring about increased competition.[16] Consumers can choose to select fewer or lower-cost funeral goods or services and to purchase caskets from a third-party seller.[17] Indeed, the American Association of Retired Persons (''AARP'') stated that survey results from 1988 and 1999 suggested an increased trend in consumer shopping for funeral goods and services.[18] Other comments also suggested that requiring pre-sale disclosure of certain important information is helpful in preventing fraud.[19]

Furthermore, comments generally reflected the view that pre-sale disclosure is a cost-effective way to disseminate to consumers material information that might otherwise be unavailable. Some comments specifically stated that the Rule brought about an organized pricing structure for funeral goods and services by unbundling prices.[20] For example, whereas funeral providers used to set prices in bundled packages, the General Price List (''GPL'') now requires itemization of charges for goods and services separately so that consumers can make informed decisions about which goods and services they wish to purchase. Because the Rule requires providers to show the GPL to consumers, consumers can compare prices as they search for their chosen goods and services.[21]

On the basis of the commentary received, the Commission has determined that the Rule continues to serve its intended purposes. As noted above, there is a presumption in favor of retaining the Rule because: ''A 'settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to.' '' *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983) (internal citation omitted). Indeed, the standards and procedures required for a de novo rulemaking or a proposed amendment or repeal of a portion of a rule do not apply to decisions to retain the Rule.[22] To the contrary, the Commission's decision may be based on evidence gathered during the previous rulemaking proceedings and the Commission's subsequent enforcement experience.[23]

In this regard, the Commission finds that the evidence in the current record echoes the evidence cited in support of the Rule in 1994. For example, in 1994, the evidence showed that the Rule, particularly the availability of the price disclosure provisions on the GPL, had increased ''price consciousness'' in the industry and among consumers.[24] The Commission concluded that the Rule's unbundling and price disclosure provisions on the GPL encouraged competition by allowing third-party casket sellers and low-cost funeral homes to enter the market.[25] Further, the Commission found that increased price competition emerged, and that consumers additionally benefited from the ability to reject items they did not wish to purchase.

Also relevant is the Commission's experience with the funeral industry. The AARP presented a 1999 survey indicating that numerous funeral providers still were failing to provide GPLs, casket price lists, and the Statement of Funeral Goods and Services Selected (an itemized list of goods and services the consumer purchased).[26] The Commission's own enforcement efforts between 1996 and 2007 indicate a more optimistic picture of industry compliance, perhaps indicating an increase in compliance rates. Since 1996, the Commission has surveyed the compliance of 2,059 funeral homes in 33 states and has referred 286 funeral homes to the Funeral Rule Offenders Program for certain Rule violations, particularly failing to provide GPLs.[27] The small but nevertheless significant amount of non-compliance uncovered during the Commission's enforcement work suggests that the Commission must remain vigilant to ensure that consumers get the benefit of the Rule's price disclosure provisions. In sum, the Rule continues to be necessary and continues to advance the goals articulated in the previous rulemaking record and the Commission's enforcement experience.

B. The Record Does Not Support Amending the Rule

Numerous comments suggested proposed revisions to the Rule, some to increase consumer protections, others to relax requirements of the Rule. However, the rule review record does not suggest that a rule amendment proceeding would likely yield evidence of prevalent unfair or deceptive practices necessary as a basis to amend the Rule. Furthermore, it is questionable that the proposed revisions to the Rule would remedy the alleged injury.

1. The Record Does Not Support Expanding the Scope of the Rule

Some comments suggested expanding the Rule to cover crematories, third-party sellers of funeral goods, and cemeteries. When the Rule was initially adopted, the Commission stated that funeral director practices were the focus

[14] *See, e.g.*, St. George, Comment 2, at 3; Apalm, Comment A-16, at 1; Bean, Comment 24, at 1; Catlett, Comment 35, at 1; Porter, Comment 59, at 1; NFDA, Comment A-56, at 1, 4; Swim, Comment A-61, at 1, 3-4; FAMSA, Comment A-76, at 4; NACAA, Comment A-87, at 1. *But see* Sellers, Comment 32, at 1 (stating that rule has increased costs); DIG, Comment 54, at 1; Caudle, Comment A-71, at 1; IFDA, Comment A-34, at 1 (''Rule has served its purpose and could readily be made optional.'').

[15] FCSC, Comment 55, at 3 (stating that in Colorado, more independent casket sellers compete with funeral homes and a ''considerable'' number of new small independent providers). *See also infra* note 32.

[16] *See, e.g.*, Newcomer, Comment 44, at 2; P. Graham, Comment 49, at 1; Collier, Comment A-66, at 2 & Attachments (consumer surveys); FAMSA, Comment A-76, at 4, 7; Bean, Comment 24, at 1.

[17] *See, e.g.*, Newcomer, Comment 44, at 2; BABG, Comment A-13 at 1; Collier, Comment A-66, at 2 & Attachments.

[18] AARP, Comment A-55, at 4-5.

[19] *See, e.g.*, Wells, Comment 31, at 1; AARP, Comment A-55, at 4; NFDA, Comment A-56, at 5.

[20] *See, e.g.*, P. Graham, Comment 49, at 1; Neel, Comment A-14, at 6; NFDA, Comment A-56, at 10.

[21] NFDA, Comment A-56, at 4.

[22] Amended Rule SBP, 59 FR at 1560 (rejecting the contention that a decision to retain the Funeral Rule must be supported by ''a new administrative record compiled afresh'').

[23] *Id.*

[24] *Id.* at 1599.

[25] *Id.*

[26] AARP, Comment A-55, at 3 (surveying consumers who had arranged funerals).

[27] *See http://www.ftc.gov/opa/2007/12/funeral.shtm* The Commission has also been active in preventing anti-competitive practices. In March of 2007, Missouri funeral regulators settled antitrust charges by the FTC affirming that they will not prohibit or discourage the sale or rental of caskets, services, or other funeral merchandise by persons not licensed as funeral directors. *See http://www.ftc.gov/opa/2007/03/missouriboard.shtm.*

of the rule-making proceeding, and thus, the Rule applies to persons who sell funeral goods *and* services.[28] The Commission considered expanding the definition of funeral provider in the rule review that culminated in the 1994 amended Rule.[29] At that time, several commenters proposed changing the Rule to cover entities selling funeral goods *or* services. However, the record evidence did not establish that these sellers, particularly cemeteries and crematories, engaged in the types of abuses addressed by the Rule (e.g., lack of price disclosure, forced bundling of goods and services, and misrepresentations of funeral goods and services).[30] Moreover, at that time, non-traditional sellers, particularly third-party casket sellers, had just recently begun to enter the market for funeral goods, and the record lacked evidence of these sellers engaging in unfair or deceptive acts or practices. Therefore, the Commission determined not to expand coverage to other segments of the funeral industry.[31]

Since the prior regulatory review, the Commission has observed an increase in competition in the sale of funeral goods and services.[32] Traditional entities in the death care industry such as cemeteries and monument dealers are now selling goods outside of their traditional product line.[33] Further, according to the National Casket Retailers Association, as of 1999 there were approximately 300 casket stores in existence.[34]

Accordingly, as part of the current Rule review, the Commission's FR Notice sought comment on issues surrounding non-traditional sellers of funeral goods and services, and also asked whether the Commission should expand the definition of ''funeral provider'' in order to bring such entities within the scope of the Rule's coverage.[35] These issues were also explored at the workshop along with questions that probed whether the requirements should be the same or different for additional entities should the Commission decide to expand the Rule's coverage.[36]

a. Cemeteries

Traditionally, the Rule has not applied to cemeteries because while cemeteries often offer funeral goods and a funeral ceremony, as a general matter, they do not prepare deceased bodies for burial and so do not meet the definition of ''funeral provider.''[37] Even cemeteries that operate as ''funeral providers,'' however, may be exempt from the Rule because they are owned by non-profit entities, such as religious and fraternal organizations. Indeed, according to a survey presented by the International Cemetery and Funeral Association (''ICFA''), some states including New York, New Jersey, Massachusetts, Wyoming, Connecticut, and Maine prohibit for-profit cemeteries.[38] Non-profit entities fall outside the scope of the Federal Trade Commission Act (''FTC Act'') and, therefore, outside the scope of the Rule.[39] Because the FTC Act excludes non-profit organizations from the Commission's jurisdiction, even if the Commission were to amend the Rule's definition of a ''funeral provider'' in a manner designed to bring cemeteries within the scope of the Rule, non-profit cemeteries would remain outside the jurisdiction of the Commission and outside the scope of the Rule's coverage.

Putting aside non-profit entities, an issue remains as to whether the Rule should be amended to cover commercial cemeteries. In response to the Commission's FR Notice, nearly all of the funeral providers, trade organizations representing funeral homes, third-party sellers of funeral or burial goods, regulators, and consumers commenting on this issue advocated expansion of the Rule to cover cemetery practices.[40] Many of these commenters urged the Commission to ''level the playing field'' because some cemeteries have shifted their practice ''from sellers of burial plots to one-stop, full-service funeral providers, competing against funeral homes for sales of every conceivable funeral good,'' and that ''cemeteries now arrange funerals at on-site chapels, or graveside, market cremation services directly to the public from their on-site crematories, and sell all types of funeral merchandise ranging from caskets and urns to vaults and markers.''[41]

Inasmuch as the Rule defines ''funeral providers,'' to include ''any person,

[28] Statement of Basis and Purpose (of the Rule), 47 Fed. Reg. 42260, 42261-42262, 42285 (1982). Indeed, the FTC Improvements Act of 1980 prohibited the Commission from expending funds during fiscal years 1980-82 to promulgate a rule that, *inter alia*, applied to persons that sold funeral goods *or* funeral services. Pub. L. 96-252, 94 Stat. 374 (codified as amended in scattered sections of 15 U.S.C.).

[29] A Final Staff Report describing the evidence was prepared by staff in the Bureau of Consumer Protection in 1990. *See* Final Staff Report to the Federal Trade Commission and Proposed Amended Rule (''1990 Staff Report'') at 109-20.

[30] *Id.*

[31] *Id.*

[32] *See generally*, Valerie Kellogg, *Who Says This is a Dying Business?*, Long Island Voice, Mar. 31, 1999, at 6; Liz Johnson, *The Retail Way to Go: Casket Sellers Latest Factor in Death Care Industry*, Asbury Park Press (Neptune, NJ), June 5, 1998, at B8; Greg Hardesty, *Cremation, Casket Stores are Options for Those Trying to Cut Funeral Costs*, Buffalo News, Nov. 10, 1997, at 2C.

Recent news reports suggest that increased competition continues to flourish. *See generally*, Craig Harris, *Funeral Co-op Offers Lower Cost Than Traditional Facilities*, The Seattle Post-Intelligencer, July 11, 2007; Scott Simonson, *Tusconan Offers Alternative to Expensive Caskets*, The Associated Press State & Local Wire, April 7, 2006; Tom Long, *Casket Sellers Think Outside the Box*, The Boston Globe, March 23, 2006, at 1; Eddie North-Hager, *The Last Discount You Will Ever Need*, Copley News Service, January 7, 2006; Laguna Niguel, *At Costco, Bargains for the Bereaved*, The Washington Post, December 18, 2005, at A23; Tommy Fernandez, *Funeral Homes Dig In; Discounters Pose Grave New Threat; Putting An End To Cheap Burials*, Crain's New York Business, October 17, 2005, at 3. *See also* Melissa Bean Sterzick, *Casket Retailers Provide Cheaper Options, Dallas Morning News*, Aug. 6, 2000, at 4A; *Death Goes Discount with Casket Sales*, Associated Press State & Local Wire, June 7, 2000; *Casket Business Breaks Out of the Box*, Patriot Ledger (Quincy, MA), June 2, 2000, at 25.

[33] AARP, Comment A-55, at 10; NSM, Comment A-54, at 6 (stating that cemeteries now sell all types of funeral merchandise). *See also Are Consumers Getting Fair Funeral Deals?*, Consumers' Research Magazine, May 1, 2000, at 16.

[34] AARP, Comment A-55, at 10 (citing National Casket Retailers Association Newsletter, April 1999). *See also* B. Brown, Comment A-75, at 1 (stating there are approximately 500 third-party casket retail stores throughout the United States and Canada).

[35] FR Notice, 64 FR at 24251, 24252-24253.

[36] *See generally*, TR at 22-78.

[37] To qualify as a funeral provider, an entity must offer funeral goods and two types of funeral services. 16 CFR 453.1(i). The two types of funeral services the Rule requires are those used to: ''(1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.'' 16 CFR 453.1(j).

[38] *See* ICFA, Comment A-38, at 18 & Ex. 13 (presenting a survey of state regulatory boards). *See also* GAO Report, Death Care Industry, Regulation Varies Across States and by Industry Segment (''GAO Report''), August 2003, at 11-12 (New York requires all cemeteries to be not-for-profit corporations); Carpenter, Comment A-30, at 1; Burke, Comment 6, at 1.

[39] The FTC Act gives the Commission authority over ''corporations,'' which is defined as ''any company . . . which is organized to carry on business for its own profit or that of its members.'' 15 U.S.C. 44, 45(a)(2).

[40] AARP, Comment A-55, at 15; AIFDF, Comment A-70, at 2; BAFS, Comment 64, at 1; Infinity, Comment A-23; Bean, Comment 24, at 1; C. Brown, Comment A-45, at 1; CMA, Comment A-40, at 1; EJ, Comment A-79, at 2, 4; FAMSA, Comment A-76, at 17; FD1292, Comment 22, at 1; FMS of GKC, A-52, at 9-10; IFDA, Comment A-34 at 11; IFDA of DC, Comment 57, at 1; IOGR, Comment A-27; FEA, Comment A-10; Hendrickson, Comment A-67, at 1; Lamb, Comment A-68, at 1; MBNA, Comment A-57, at 3; McCune, Comment A-32; McQueen, Comment 27, at 2; Nelsen, Comment A-46; NFDA, Comment A-56, at 56; Mayor Norquist, Comment A-60 at 1; NSM, Comment A-54, at 2; NYSMBA, Comment A-35; Oswald, Comment 51, at 1; Pinkerton, Comment A-63, at 3; Richardson, Comment A-37 at 1; Scott, Comment 47, at 1; Spear, Comment A-06 at 1; St. George, Comment 2, at 3; Vassar, Comment 62, at 1; Walmck, Comment A-42, at 1.

[41] NSM, Comment A-54, at 6-8 (citing specific examples). *See also* IFDA of DC, Comment 57, at 1 (urging the Commission to ''level the playing field''); NJF&MA, Comment 58; AARP, Comment A-55, at 15; Pinkerton, Comment A-63, at 3.

partnership or corporation that sells or offers to sell funeral goods *and* funeral services to the public,'' the playing field is level.[42] While it has been the traditional province of funeral homes to operate in the manner described by the Rule, the Rule is broad enough to encompass commercial cemeteries, crematories, or other businesses that market funeral goods and both types of funeral services to the public.[43]

Another group of commenters asserted that cemeteries engage in the ''tying'' and ''bundling'' of burial goods and funeral services, that they fail to make adequate price disclosures, or that they engage in other practices prohibited by the Rule. These comments urged the expansion of the Rule to cover cemeteries by changing the definition of funeral provider to anyone who sells or offers to sell ''funeral goods *or* funeral services to the public.'' In particular, the comments argued that a number of cemeteries refuse to permit consumers to purchase monuments and grave markers from another party, refuse to permit the installation of monuments and grave markers by third parties, or, alternatively, charge a ''handling'' fee for monuments and grave markers purchased from or installed by third parties.[44] Another comment further stated that some cemeteries require consumers to purchase grave liners, urn vaults, or expensive cremation containers.[45] AARP's comment provided statistics indicating that 29% of consumers it surveyed reported that cemeteries made representations regarding the protective or preservation qualities of certain burial goods.[46] Another comment argued that cemeteries engage in unfair practices in the sale of pre-need arrangements.[47]

Other commenters opposed expansion of the Rule to cover cemetery practices, asserting that there is no evidence of widespread abuse in the cemetery industry.[48] ICFA accurately observed that the Commission received very few complaints concerning cemeteries in the four years preceding this review, and pointed to survey data showing that consumers view cemeteries very favorably.[49] It also noted that unlike funeral homes which are run almost exclusively as for-profit businesses, many cemeteries are not-for-profit organizations run by religious groups, municipalities, and fraternal organizations.[50] Other commenters suggested that the cemetery industry is adequately regulated, or should be exclusively regulated, by the states.[51]

The Commission does not believe that the record developed during the regulatory review would justify initiating a rule amendment proceeding to expand the scope of the Rule to cover commercial cemeteries not operating as ''funeral providers.'' First, there is insufficient evidence that *commercial* cemeteries are engaged in widespread practices that injure consumers. Second, even if expanding the scope of the Rule would benefit consumers who use commercial rather than non-profit cemeteries, the lopsided application of the Rule to some, but not all, cemeteries would likely prove unduly costly. There would be confusion among the general public as to what type of information they could expect to receive and what rights they have to purchase goods from third parties. To the extent additional requirements are intended to allow consumers to compare costs among cemeteries, the inconsistent application of the Rule to some cemeteries and not others could make such comparisons impossible or impractical. Thus, on the basis of this record, the Commission declines to embark on a proceeding to expand the scope of the Rule to cover cemeteries that currently are not covered.

b. Third-Party Sellers of Funeral Goods

Nearly all of the regulators, funeral providers, and consumer organizations commenting on this issue suggested that the Rule should be expanded to cover third-party sellers of funeral goods, e.g., casket retailers and monument dealers.[52] More specifically, some commenters advocated that third-party sellers be required to provide price lists, based on an argument that the Commission should ''level the playing field.''[53] Third-party sellers, on the other hand, argued that they already provide price lists.[54] Furthermore, they argued that there is no evidence of widespread consumer abuse in this part of the industry that would warrant such expansion of the Rule.[55]

As discussed below, the Commission concludes that expansion of the Rule to cover third-party sellers is not warranted. The record is bereft of evidence indicating significant consumer injury caused by third-party sellers. Indeed, third-party retailers have a strong economic incentive to display their prices to the public at large because offering a lower price is the primary way they compete against funeral providers for sales of funeral goods, such as caskets.

c. Crematories; Crematory Practices

The Rule expressly applies to crematories that provide cremation services and sell or offer to sell funeral goods to the public.[56] In particular, the Rule prohibits all crematories from requiring consumers to purchase a casket for direct cremation.[57] However, the Rule does not apply to crematories that do not sell or offer to sell funeral goods. In response to the FR Notice, the Commission received very few comments regarding crematories or crematory practices not currently covered by the Rule. The Cremation Association of North America (''CANA''), a trade organization with over 1,000 members, pointed out that many of its members are already covered by the Rule.[58]

As a whole, the record does not suggest that crematories engage in unfair or deceptive practices that are prevalent and that would justify proposing to expand the Rule's regulation of crematories. Nevertheless, some comments described the allegedly unfair

[42] 16 CFR 453.1(i) (emphasis added). Funeral goods are ''the goods which are sold or offered for sale directly to the public for use in connection with funeral services.'' 16 CFR 453.1(h).

[43] *See supra* note 37.

[44] MBNA, Comment A-57, at 6.

[45] NSM, Comment A-54, at 16-18. In fact, the Rule acknowledges that some cemeteries require outer burial containers so that the grave will not sink in. *See* 16 CFR 453.3(c)(2).

[46] AARP, Comment A-55, at 4. The same AARP study showed that even those covered by the Rule apparently continue to violate it by making representations about the preservative value of a casket. The AARP survey reported that such representations were made to 34% of surveyed consumers who had viewed a casket.

[47] IFDA, Comment A-34, at 12

[48] Carpenter, Comment A-30, at 1; ICFA, Comment A-38, at 2; Neel, Comment A-14, at 3-4; WCA, Comment A-72, at 1; VA CB, Comment A-20, at 1.

[49] ICFA, Comment A-38, at 1-2 & Attachment at 11. As another commenter pointed out, however, other reasons may exist for the lack of complaints. *See* Bean, Comment 24 at 1.

[50] *See supra* note 38.

[51] VA CB, Comment A-20 at 1-2; SCI, Comment A-59, at 1-2. According to a report issued by the General Accounting Office in 2003, 34 out of 44 states responding to its survey reported that they regulate cemeteries that are not run by religious organizations or non-profit groups. *See supra* note 38.

[52] *See, e.g.*, CA C&FP-1, Comment A-11, at 2; NJ DCA, Comment 56, at 1; WI DR&L, Comment 5, at 1; KS OAG, Comment A-77, at 1; Mayor Norquist, Comment A-60, at 2; Senator Schumer, Comment 19, at 1; NFDA, Comment A-56; NSM, Comment A-54, at 2, 20.

[53] Stradling, Comment 4, at 1 (expressing concern that consumers have no reasonable basis to compare prices and services of all the different entities in the death care industry).

[54] Gray, Comment 10b, at 1; Lamb, Comment A-68, at 1; St. George, Comment 2, at 2.

[55] BABG, Comment A-13, at 1; Oswald, Comment 51, at 1; Rapozo, Comment 18, at 1; Rubin, Comment A-47, at 1. *See also* Swim, Comment A-61, at 2.

[56] *See* 16 CFR 453.4(a)(1).

[57] 16 CFR 453.4(a)(1).

[58] CANA, Comment A-58, at 3. CANA's members include crematories and suppliers to the crematory segment of the death care industry. *Id.*

practices of some *funeral providers* in connection with cremation services they offer.[59] Other comments discussed pricing and antitrust concerns.[60] Because there is insufficient evidence to support a finding that crematories engage in widespread acts or practices that injure consumers, the Commission declines to propose expansion of the Rule's coverage of crematories.

2. The Record Does Not Support Eliminating the Non-declinable Fee

Under the Funeral Rule, funeral providers can charge consumers only one non-declinable fee - for the ''services of funeral director and staff.''[61] The non-declinable fee grew out of the Rule's unbundling provisions, which required funeral providers to itemize prices. These unbundling requirements meant that funeral providers could no longer sweep into the price of a funeral package their fee for the basic services they perform in connection with planning a funeral. By including a Rule provision expressly permitting providers to charge a basic services fee, the Commission acknowledged that ''irrespective of the combination of goods and services [a consumer selects], the very process of selection itself will involve use of the funeral provider's services.''[62] The Commission made several amendments to this provision in 1994, designed to ''clarify the Commission's intent and providers' obligations in distinguishing non-declinable service fees from other service charges associated with providing separately listed, declinable goods and services.''[63] As it stands today, the basic services fee is to include only the charges for a funeral provider's basic services that are associated with arranging and planning a funeral (and a portion of overhead, if the provider chooses to include it).[64]

Comments that discussed the efficacy of the non-declinable fee are polarized. Comments from individuals, consumer groups and third-party sellers generally opposed the basic services fee, while comments from funeral homes and trade associations supported it. The most common arguments espoused by those opposing the fee are that the fee is too expensive and confusing, and provides little consumer benefit.[65] The Funeral and Memorial Societies of America (''FAMSA''—predecessor of the Funeral Consumers Alliance), for instance, indicated that the basic services fee on average amounts to almost 25% of the total funeral bill. FAMSA contended that most of the items included in this fee belong elsewhere on the GPL, and that the non-declinable fee has turned into another form of bundling. As a result, according to FAMSA, the non-declinable fee has essentially undermined the original Rule's purpose of promoting ''full itemization and informed consumer choice.''[66] The Funeral and Memorial Society of Greater Kansas City (''FMS of GKC'') conveyed concern that the fee is a ''wild card that most families know nothing about,'' and many consumers inquiring about prices over the telephone do not know even to ask about the fee.[67] FMS of GKC advocated eliminating the basic services fee or, at the very least, clarifying exactly what is included in the fee.[68] All in all, most of the commenters that opposed the current formulation of the basic services fee encouraged the Commission either to set limits on the fee or eliminate it completely.[69]

The vast majority of funeral homes and trade organizations, as well as a few individuals and consumer groups, supported the non-declinable fee provision. Most supporters offered various economic arguments to defend the non-declinable fee. Some commenters point to the rationale behind the basic services fee, which is to impose a fixed charge for the most commonly-utilized services provided to most customers.[70] Another commenter noted that because it costs money for funeral providers to maintain their funeral homes (and pay for staff to be on-call 24 hours per day), consumers who utilize their facilities and services must pay for them.[71] Finally, Peter Stefan, a Massachusetts funeral director, observed that funeral providers have to be able to recover their costs to stay in business, but additionally reminded critics that because the Rule has opened the door to competition in the sale of funeral goods, costs no longer can be recovered by simply adding them on to casket prices.[72]

Other commenters agreed that economic theory and basic efficiency support maintaining the non-declinable fee. One commenter surmised that if the basic services fee were eliminated, funeral providers would have to spread their costs over other items, which, he believed, would lead to higher charges.[73] Commenter Charles Graham,

[59] FAMSA, for example, opined that some funeral providers that also offer cremation services charge a fee for identifying the body prior to cremation, and fail to offer low-cost alternative containers for cremated remains. Comment A-76, at 13-14. *See also* C. Graham, Comment 42, at 1; Greenlee, Comment 12, at 1; McQueen, Comment 27, at 1; Pinkerton, Comment A-63, at 2; SCI, Comment A-59; Vassar, Comment 62, at 2-3. Finally, a few comments stated that the Rule should be expanded to include all members of the death care industry, expressly or implicitly including crematories that offer only funeral services (but not funeral goods) to the public. FEA, Comment A-10, at 5,7; IFDA of DC, Comment 57, at 1; NSM, Comment A-54, at 2.

[60] For example, the Bay Area Funeral Society (''BAFS''), a San Francisco-based trade organization that represents different members of the death care industry, including some crematories, expressed the view that large corporations are monopolizing the crematory industry. BAFS, Comment 64, at 1. The Commission also received one comment from a consumer complaining about the price paid for cremation. Ordes, Comment A-28, at 1-2.

[61] 16 CFR 453.4(b)(1)(ii). Services of funeral director and staff (''basic services fee'') is defined as:

[t]he basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

16 CFR 453.1(p).

[62] SBP, 47 FR at 42282.

[63] Amended Rule SBP, 59 FR at 1607. The amended Rule further explains that ''[t]he changes are designed to promote industry compliance and consumer understanding of the services they must purchase and those they may decline, without substantially altering providers' obligations. The amendment permitting providers to add the phrase 'and overhead' to the non-declinable service fee disclosure responds to industry's stated concern that consumers may be deceived by service fee price disclosures that fail to disclose a charge for overhead, and clarifies for providers that the non-declinable fee can include overhead not allocated to other charges.'' *Id.* at 1609 (footnote omitted).

[64] The Commission's 1994 Rule amendments added an optional phrase ''and overhead'' to its basic services fee disclosure requirement, allowing funeral providers to decide whether or not to include the phrase in its required disclosure. 16 CFR 453.2(b)(4)(iii)(C)(1) and (2).

[65] *See, e.g.*, FAMSA, Comment A-76, at 20-21; FMS of GKC, Comment A-52, at 9-10; Swim, Comment A-61, at 3; St. George, Comment 2, at 2. The comment submitted by the Funeral and Memorial Society of Greater Kansas City included survey information that demonstrates a wide disparity in basic services fees in the Kansas City market. According to its 1998 survey, the basic services fees ranged from $690 to $2,770. Comment A-52, at 9-10. The survey does not reveal whether different costs to the funeral home or different sets of services account for the price disparity.

[66] FAMSA, Comment A-76, at 25.

[67] FMS of GKC, Comment A-52.

[68] *Id.* At the public workshop, FMS of GKC's representative opined that due to the problems inherent in the basic services fee, it is ''not in the consumer's best interests to have this fee here.'' Bern-Klug, TR at 219-220. Another commenter who vehemently opposed the non-declinable fee insists that it is ''an anti-consumer loophole through which the Funeral Industry has driven a billion dollar truck.'' Hale-Rowe, Comment 34, at 1.

[69] *See, e.g.*, Sandy, Comment 33, at 1; Infinity, Comment A-23, at 1; FMS of GKC, Comment A-52, at 9.

[70] *See, e.g.*, C. Graham, Comment 42, at 2; Pray, Comment 46, at 1; Stefan, Comment A-41, at 10; SCI, Comment A-59, at 2. *See also* Carmon, TR at 207-213 (discussing basic services that apply to all situations).

[71] Apalm, Comment A-16, at 1. The commenter also noted that some people balk at the fee, but likens their objections to what he would consider an unreasonable expectation: being able ''to shop at Saks and pay K-Mart (sic) prices.''

[72] Stefan, Comment A-41, at 10.

[73] McCune, Comment A-32, at 1 (predicting that funeral providers would allocate more than 100%

a licensed funeral director and embalmer, also contended that prohibiting the non-declinable fee would require costs once again to be spread over other services and merchandise. He further asserted that the basic services fee allows consumers the widest choice among options, gives consumers the advantage of paying for common costs only once, and enables funeral providers to recoup their costs even when consumers use their own goods, as allowed by the Rule.[74] Finally, the International Order of the Golden Rule (''IOGR''), looked at the bundle of basic services included in the non-declinable fee, and noted that the fee ''assures a family that the funeral home staff will take responsibility for all aspects of planning a funeral.''[75]

After careful consideration, the Commission has determined not to amend the basic services fee provisions in the Rule. The purpose of the Rule is not to regulate prices, nor does an increase in the price of the basic services fee necessarily indicate an unfair practice. Regardless of the particular funeral arrangements a consumer seeks, there are a number of fixed costs related to funeral arrangements for which funeral providers are entitled to seek payment when their services and facilities are used. Prior to the adoption of the Rule, all costs were bundled into one package, none of which consumers could decline. By allowing a basic services fee, the Rule ensures that consumers get the benefit of choosing goods and services among a variety of options—including the option to purchase goods from the funeral provider's competitors—and paying for common costs only once. The evidence does not support a finding that the non-declinable basic services fee causes injury to consumers, and therefore, amending this portion of the Rule is unwarranted.

3. The Record Does Not Support Altering the ''Casket Handling Fee'' Prohibition

The 1994 Rule amendment clarified the Commission's ''unbundling'' provision, by prohibiting a funeral provider from charging any fee that is not for either the basic services of the funeral director and staff or the specific items selected by the consumer. This limitation on permissible fees served to prohibit a funeral provider from charging consumers a ''casket handling fee'' for using a casket purchased elsewhere. The Commission determined that the clarification was necessary because the imposition of substantial casket handling fees was undermining the Rule's unbundling requirements, and it was frustrating the Rule's goal of encouraging competition.

The Commission's 1999 FR Notice solicited comment on whether the 1994 amendments were effective in prohibiting casket handling fees. Most comments that addressed this issue expressed the view the 1994 amendments eliminated ''casket handling fees'' per se.[76] However, some commenters advocated the reinstatement of casket handling fees to allow funeral providers to recoup costs of handling caskets purchased from third-party sellers.

Some funeral providers agreed that the ban on casket handling fees benefits consumers and results in increased competition and consumer choice.[77] A number of other funeral providers contended that the prohibition on casket handling fees is detrimental to funeral providers. They argued that there are real costs associated with accepting delivery of a casket as well as preparing the casket for use.[78] Commenters contended that when a casket is purchased from a source other than the funeral provider, the provider has no mechanism to recoup the preparation costs, short of adding those costs to the basic services fee.[79] Some of these commenters, therefore, suggested that a reasonable casket handling fee should be allowed.[80] Some commenters who advocated allowing a reasonable casket handling fee argued that such a fee should apply to any casket used in a funeral, regardless of whether it is purchased at the funeral home or elsewhere.[81]

The Commission does not propose amending the Rule to allow casket handling fees. The arguments that funeral providers need the fees as a mechanism to recover lost profit were raised during the last Rule amendment proceeding, and the Commission rejected them.[82] Though some commenters contended that there are costs associated with accepting delivery of a casket from a third-party seller, the record is insufficient to support a proposal to repeal this provision of the Rule. Indeed, at least two funeral providers commenting on this issue supported the ban on casket handling fees, noting that funeral providers accept delivery of caskets from other funeral homes routinely and that costs are already included in the service fees.[83] The record from the previous review also showed that the costs, if any, associated with preparing a third-party casket are normally small and are already included in the service fees.[84]

4. The Record Does Not Support Eliminating Discount Packages

In contrast to commenters who supported reinstating casket handling fees are those who contended that the Commission should regulate the use of discount packages which, these commenters asserted, undermine the casket handling fee prohibition.[85] Some commenters pointed to instances of funeral providers inflating their itemized prices so that they could offer package ''discounts'' which most consumers choose.[86] Some casket retailers argued that widespread use of ''sham'' discount packages, especially when the discount packages are

of the basic services fee to other charges to compensate for the fact that consumers will choose some services but not others).

[74] *Id.*

[75] IOGR, Comment A-27, at 2.

[76] *See, e.g.*, McQueen, Comment 27, at 1; Sandy, Comment 33, at 1; DIG, Comment 54, at 7; Neel, Comment A-14, at 3.

[77] *See, e.g.*, McQueen, Comment 27, at 1; P. Graham, Comment 49, at 2.

[78] *See, e.g.*, FEA, Comment A-10, at 2-3, 9, Attachment (identifying the following services: unloading the casket, moving it into a room, and inspecting it); IFDA, Comment A-34, at 2 (suggesting a fee between $100 and $300).

[79] *See, e.g.*, FEA, TR at 100-102.

[80] *See, e.g.*, IFDA of DC, Comment 57, at 2; DeBor, Comment A-9, at 1 (if reasonable casket handling fee is not permitted, creative packaging will likely continue); FEA, Comment A-10, at 2-3, 9 (without allowing a reasonable casket handling fee, casket sellers have shifted ''some of their costs to funeral homes for handling, inspection and movement of the casket''); Apalm, Comment A-16, at 1; IOGR, Comment A-27, at 1; IFDA, Comment A-34, at 2, Attachment.

[81] *See, e.g.*, Newcomer, Comment 44, at 7.

[82] Amended Rule SBP, 59 FR at 1605.

[83] McQueen, Comment 27, at 1; P. Graham, Comment 49, at 2. These commenters also opined that allowing casket handling fees would cause consumers injury. *See also* Neel, Comment A-14, at 3 (funeral home owner stating casket handling fees are unfair to consumers and constitute profit recovery fees).

[84] 1990 Staff Report at 123 & n. 614.

[85] In addition, some third-party sellers contended that some funeral providers make allegedly deceptive statements or use unfair practices in order to increase their casket sales. For instance, one commenter reported that some funeral providers have refused to extend credit to consumers who do not purchase a casket from them, and that other providers have intentionally damaged caskets that their customers have purchased from third-party sellers. B. Brown, Comment A-75, at 1. Because there is only anecdotal evidence of potentially unlawful practices in the sale of caskets and no commenter submitted data suggesting that these practices are widespread, the Commission lacks a basis to believe that such practices are prevalent in the industry.

[86] *See, e.g.*, NCRA, Comment 48, at 1; Vassar, Comment 62, at 1; Neel, Comment A-14, at 3; Infinity, Comment A-23, at 2; Gray, A-29, at 1; Swim, TR at 106. *But see* NSM, Comment 54, at 7 (arguing that discount packages are not harmful but instead offer consumers increased choice and simplicity, save consumers money, and are generally pro-competitive).

available only with a casket purchased from the funeral provider, has diminished the benefits of the prohibition on casket handling fees.[87] A few commenters stated that discount packages should be prohibited completely or, alternatively, that the Commission should regulate the discount package price.[88] Another view, taken by one workshop participant, is that packages are ''an appropriate marketing tool,'' but they should not be tied to the purchase of a casket.[89] The National Funeral Directors Association (''NFDA'') stated that 25% of its members offer discounts on funeral packages, and 14% of its members offer discount packages tied to the purchase of caskets.[90]

The Commission recognizes that discount packages tied to casket sales may undermine the Rule if the increase in cost for á la carte services results in higher total costs to consumers who choose to purchase a casket elsewhere. One casket retailer described such an experience, where a family could not purchase his casket because the overall cost of the funeral would have increased by $1,000.[91] Another comment presented evidence of three funeral homes that offered discount packages tied to casket sales and showed that service charges would increase significantly if consumers opted to purchase caskets elsewhere.[92] While this practice could raise concerns if the discount effectively swallows any cost savings associated with purchasing a less expensive casket from a competitor, there is insufficient evidence to show a prevalent practice of funeral providers offering discount packages in a manner that unfairly interferes with consumers' ability to provide their own caskets. Some indication of prevalence would be necessary to justify a rule amendment proceeding.

In sum, the record does not provide a basis to support any amendment. Accordingly, the Commission does not propose to amend the Rule to regulate the offer of discount packages. As noted in the FR Notice, the Rule does not regulate prices, nor does it prohibit offering discount funeral packages.[93] The goal of the Rule's unbundling requirement was to increase, not stifle, consumer choice and competition. To the extent consumers wish to purchase a combination of the goods and services a funeral provider offers, bundling of discount packages likely confers benefits.

5. The Record Does Not Support Altering the Rule's Disclosure Requirements

The Rule requires funeral providers to give any consumer who inquires in person about making funeral arrangements a general price list (''GPL'') that shows the itemized prices for 16 specific goods and services and also contains several required disclosures.[94] The GPL must be given out at the beginning of any discussion of funeral goods or services, arrangements, or prices, and consumers must be allowed to keep the price list.[95] The current Rule does not mandate a specific format for the list; other goods, services, or packages besides the 16 specified goods or services can be included on the GPL.

The Rule further provides that if the GPL does not include the prices of all of the caskets and outer burial containers regularly offered by the funeral provider, additional price lists must be provided to consumers inquiring in person about those items.[96] The other price lists - a casket price list (''CPL'') and an outer burial container price list (''OBCPL'') - must be shown to consumers ''upon beginning discussion of, but in any event before showing'' caskets or containers.[97] The Rule also requires funeral providers to give consumers an itemized written statement (''statement of funeral goods and services selected'' or ''SFGSS'') at the conclusion of the arrangements conference. This statement must contain a detailed list of all goods and services selected, prices, cash advance items,[98] the total cost of the arrangements, as well as several prescribed disclosures.[99] In general, the disclosures currently required are designed to prevent economic injury to consumers by informing consumers about their right to purchase only those goods and services they desire. The disclosures also address embalming, mark-ups charged for any ''cash advance'' item, and charges resulting from legal, cemetery, or crematory requirements.

According to many commenters, the GPL provides significant benefits to consumers.[100] Indeed, no commenter advocated eliminating any of the required disclosures. Neither did any of the workshop participants, in response to a question, advocate eliminating price or other disclosures from the GPL.[101]

a. Proposed Revisions

Commenters made numerous suggestions to add specific itemized price disclosures to the GPL and to add other informative disclosures to the various disclosure statements. Also, commenters proposed other changes to the disclosure statements, such as altering the format of the disclosure statements and changing the timing of delivering the GPL.

1. GPL Itemized Price Requirements

The FR Notice set forth several specific questions about the GPL, such as whether the Commission should add or delete any required itemized price disclosures. The FR Notice also asked for comment on FAMSA's suggestion to include the following four additional items to the GPL's required price itemization: the price for private viewing without embalming, the price for body donation to a medical school, the price for the cremation process itself, and the price for rental caskets.[102]

The comments are divided as to the benefits of expanding the GPL. Individuals and consumer groups generally advocated expanding the

[87] *See, e.g.*, St. George, Comment 2, at 2; Rapozo, Comment 18, at 1; Vassar, Comment 62, at 1; Broussard, Comment A-24, at 1; Gray, Comment A-29, at 1; Lamb, Comment A-68, at 1; B. Brown, Comment A-75, at 2; Graham, TR at 109; Nguyen, Comment 16, at 1; NCRA, Comment 48, at 1; Cheris, TR at 91; Infinity, Comment A-23, at 2; Taira, Comment A-53, at 1-2. *See also*, Swim, TR at 104-106 (consumers often do not know the actual price of a package).

[88] *See, e.g.*, Vassar, Comment 62, at 1 (suggesting that discount packages not be allowed by requiring the total package price to equal the sum its parts); Graham, Comment 49, at 2 (recommending the FTC limit the percentage discount allowable on packages).

[89] Karlin, TR at 108.

[90] Gilligan, TR at 112-13; NFDA, Comment A-56, Exhibit A.

[91] Nguyen, Comment 16, at 1.

[92] NCRA, Comment 48, at 1 (reproducing price lists of three funeral homes in Illinois). It is not clear whether the total net cost of the funeral would increase if consumers purchased their casket from a retailer rather than using the package discount from the funeral home.

[93] FR Notice, 64 FR at 24251 & n.12. A staff advisory opinion states that ''funeral homes may encourage consumers to purchase a casket from their organization by offering discounts on services or items except for a non-declinable Basic Services Fee.'' Opinion 97-3.

[94] 16 CFR 453.2(b)(4).

[95] 16 CFR 453.2(b)(4)(i)(A).

[96] 16 CFR 453.2(b)(2) and 453.2(b)(3).

[97] 16 CFR 453.2(b)(2)(i) and 453.2(b)(3)(i).

[98] ''A 'cash advance item' is any item of service or merchandise described to a purchaser as a 'cash advance,' 'accommodation,' 'cash disbursement,' or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.'' 16 CFR 453.1(b).

[99] 16 CFR 453.2(b)(5), 453.3(d) and (f), and 453.4(b)(2)(i)(B).

[100] *See, e.g.*, Newcomer, Comment 44, at 2; R. Adams, Comment A-19, at 1; Johnson, Comment A-43, at 2; AARP, Comment A-55, at 4; AIFDF, Comment A-70, at 1.

[101] TR at 190.

[102] FR Notice, 64 FR at 24250-51.

GPL's required itemized price disclosures,[103] while on the whole, funeral providers and trade associations tended to oppose expansion.[104] The consumer groups and individuals that favor adding any or all of the four recommended itemized price disclosures suggested that the consumer benefits realized by receiving the additional information would outweigh any associated burdens. However, none of the suggested price list additions received overwhelming support.

By contrast, funeral providers and trade associations generally opposed expanding the GPL's required itemized price disclosures.[105] They agreed that the GPL is valuable to consumers, but argued, for instance, that the GPL already is too complicated.[106] These commenters contended that the GPL's value to consumers will diminish as it gets longer. Some of these commenters also believed that adding the particular items mentioned in the FR Notice is unnecessary because they are generally included elsewhere in the GPL itself.[107] Finally, one commenter noted that adding additional items to the price list could actually increase costs to consumers because what once was a ''professional courtesy'' would become a new charge.[108]

2. GPL Information Disclosures

A number of commenters recommended the Commission add several other new required disclosures to the GPL.[109] Specifically, commenters expressed an interest in the following additional disclosures in the GPL:

1. A disclosure that informs consumers of their right to purchase funeral items elsewhere or use their own funeral goods without incurring an extra charge from the funeral provider;[110]

2. A disclosure of whether the funeral facility is corporate-owned;[111]

3. A disclosure of whether the funeral provider is a for-profit entity;[112]

4. Disclosures that address facts about embalming[113] and viewing;[114]

5. A disclosure if funeral home staff is paid a commission based on the total cost of the funeral;[115]

6. A price disclosure of only 10 or 20 of the most commonly purchased caskets on the GPL;[116] and

7. A bilingual price list.[117]

3. Additional GPL Issues

A number of commenters addressed issues that go beyond the GPL's content. Some commenters, primarily industry members, objected to the timing provisions. These commenters advocated relaxing the timing of disclosure, arguing that the current requirement to provide a GPL upon beginning the discussion of specifics can be awkward for the funeral provider, may make the funeral provider appear insensitive, and may cause grieving family members to become indignant.[118] Other commenters focused on the difficulty of comparing different providers' GPLs, and suggested, for instance, requiring a standard GPL format,[119] devising a unique numbering system to identify a particular good or service on every GPL,[120] requiring a certain font size,[121] and requiring disclosure of a manufacturer's suggested retail price (''MSRP'') on merchandise.[122] One commenter also suggested that the Commission use different terms (e.g., use ''merchandise'' instead of ''goods'') and definitions for such items as ''alternative container.''[123] Another commenter recommended that the Rule require consumers to sign a statement acknowledging receipt of the GPL.[124]

A few commenters recommended changes to the other price lists, namely the casket price list (''CPL'') and the outer burial container price list (''OBCPL''). One comment suggested a disclosure that outer burial containers and sealed or gasketed caskets do not protect human remains from decomposition,[125] and other comments suggested requiring standardized descriptions of casket models.[126] Another commenter suggested that all price lists be given to consumers to keep.[127]

The comments also offered a few suggested changes to the statement of funeral goods and services selected. Most of these suggestions involved cash advances; the suggestions ranging from having to disclose the actual markup to not allowing a markup at all.[128] Other commenters recommended adding a statement to the SFGSS directing consumers' attention to the important GPL disclosures.[129]

b. Analysis

The applicable standard for amending a Rule demands, among other things,

[103] *See, e.g.*, Ceremsak, Comment 13, at 1; FAMSA, Comment A-76, at 22-24; FMS of GKC, Comment A-52, at 8-11; AARP, Comment A-55, at 19-20 (suggesting that GPL include all funeral and burial expenses). *But see* Wells, Comment 31, at 1 (stating that price lists are already too long).

[104] *See, e.g.*, DIG, Comment 54, at 8; ICFA, Comment A-38, at 37; B. Johnson, Comment A-43, at 5. *See also* NJDCA, Comment 56, at 1 (regulator that recommends no GPL modifications).

[105] Besides the few funeral providers that supported - or at least did not oppose - a requirement to disclose the price of rental caskets, a few funeral providers also did not oppose limited expansion of the GPL. *See, e.g.*, C. Graham, Comment 42, at 3-4 (referring to adding a body donation charge and casket ''delivery fee'' to GPL, and rental casket (to CPL) only if funeral provider charges fees for those services).

[106] *See, e.g.*, FEA, Comment A-10, at 10 (also asserting that the government's required itemization is responsible for higher prices); IFDA, Comment A-34, at 10; NFDA, Comment A-56, at 80.

[107] *See, e.g.*, Pray, Comment 46, at 2; E. Adams, Comment A-18, at 1.

[108] Mikell, Comment 53, at 2.

[109] *See, e.g.*, B. Brown, Comment 11, at 1; Greenlee, Comment 12, at 2; CCRA, Comment A-51, at 2; NACAA, Comment A-87, at 3.

[110] *See, e.g.*, B. Brown, Comment 11, at 1; Greenlee, Comment 12, at 2; Swim, Comment A-61, at 3; Oswald, Comment 51, at 1; BABG, Comment A-13, at 1; CCRA, Comment A-51, at 2; NACAA, Comment A-87, at 3; Cheris, TR at 202.

[111] *See, e.g.*, Fredrick, Comment 26, at 1; CCRA, Comment A-51, at 2; Swim, Comment A-61, at 1; Levi, Comment A-21, at 1; Leonard, Comment A-48, at 3-4; Kim, Comment A-83, at 1 (stating that sometimes corporate-owned funeral homes charge twice as much as others); Silva, Comment 39 at Attachment p.2-3. A Market Facts survey commissioned by The Family Funeral Home Association (''FFHA'') indicated that 84% of the survey respondents prefer to do business with a locally owned funeral home. FFHA, Comment A-85, at 4. One commenter asserted that advertisements by corporate-owned funeral homes suggest to consumers that the funeral home is family-owned. Chedotal, Comment A-69, at 1.

[112] McAdams, Comment A-86, at 1.

[113] B. Brown, Comment 11, at 1 (''Embalming is only a short method of preserving the remains for a viewing''); Leonard, Comment A-48, at 4-5; Wagoner, Comment A-49, at 1.

[114] B. Brown, Comment 11, at 1 (''A viewing can be had with or without the embalming required in this establishment . . . [t]he viewing does not have to have the use of any container (casket).'').

[115] FFHA, Comment A-85, at 4.

[116] Neel, Comment A-14, at 6.

[117] Swim, Comment A-61, at 3.

[118] *See, e.g.*, NSM, Comment A-54, at 26-29; CANA, Comment A-58, at 4 -5 (also suggested FTC loosen requirements to allow asterisks and footnotes on price lists). The timing issue was raised in the previous Rule Amendment proceeding, and the provision was changed somewhat to clarify the timing requirements. *See* Amended Rule SBP, 59 FR at 1605-08.

[119] *See, e.g.*, P. Graham, TR at 182, 184; Carlson, TR at 184. *But see* Gilligan, TR at 182-183, 185; Hayes, TR at 188.

[120] FMS MB, Comment 25, at 1.

[121] *See, e.g.*, AARP, Comment A-55, at 21; FAMSA, Comment A-76, at 27.

[122] Fredrick, Comment 26, at 1.

[123] *See, e.g.*, CANA, Comment A-58, at 7-8 (suggesting that ''cremation container'' is more descriptive than ''alternative container'').

[124] Stefan, Comment A-41, at 3.

[125] Greenlee, Comment 12, at 2.

[126] *See, e.g.*, Vassar, Comment 62, at 2 (suggesting use of manufacturer's description on the CPL); AARP, Comment A-55, at 21 (suggesting including gauge and description of metal used).

[127] Lamb, Comment A-68, at 1.

[128] *See, e.g.*, Vassar, Comment 62, at 3; Levi, Comment A-21, at 1; Neel, Comment A-14, at 5 (recommending a disclosure about the mark-up on cash advances); FAMSA, Comment A-76, at 27 (stating that the current disclosure is inadequate); FMS of GKC, Comment A-52, at 11 (stating that markup on cash advances should be disclosed); C. Graham, Comment 42, at 4 (suggesting funeral providers recoup cash advance costs in basic services fee, charge consumer actual cost, thereby alleviate the need for disclosure).

[129] Greenlee, Comment 12, at 2.

evidence that a prevalent misrepresentation or failure to disclose material information is causing injury to consumers and that certain disclosures will remedy the injury. Here, the regulatory review record provides an insufficient basis to propose initiation of a rule amendment proceeding to address injury resulting from the lack of additional disclosures or to suppose that the proposed disclosures would remedy such injury.[130] To the contrary, additional disclosures could have the effect of obscuring essential information while increasing the burdens on funeral providers. The Commission believes that it is inappropriate to propose new disclosure requirements in the absence of some likelihood that a rule amendment proceeding could develop evidence that they are necessary to remedy prevalent unfair or deceptive practices. Many of the suggested revisions to the GPL were extensively analyzed and discussed in the prior Rule review, and there is no showing of changed circumstances warranting a fresh analysis of these issues.[131]

With respect to the proposal that the timing of providing the GPL to consumers should be delayed, the Commission observes that for the GPL to have the intended benefit of increasing price awareness and competition, it must be made available at the earliest opportunity. Most significantly, however, there is insufficient evidence that consumers suffer injury from receiving the GPL when they begin discussing funeral arrangements; nor does the record support a conclusion that amendment of the Rule should be initiated to alleviate unjustified compliance costs to industry. The Commission believes that the timing of providing the GPL is clear and that the bright line standard articulated in the Rule benefits industry, and it produces benefits to consumers that likely outweigh the compliance costs.

Therefore, the Commission declines to initiate a rule amendment proceeding to amend or repeal any portion of the disclosure requirements in the Rule.

6. The Record Does Not Support Amending the Rule to Address the Sale of Pre-need Funeral Arrangements

The FR Notice set forth some specific questions about pre-need issues, such as whether pre-need transactions are easily distinguished from at-need transactions, whether pre-need consumers spend less than at-need consumers, and whether widespread unfair or deceptive practices exist in pre-need funeral transactions.[132] Additional pre-need issues were discussed at the public workshop, including the apparent trend towards increased pre-need transactions, the distinction between prearrangement and prepayment, and the incidence of consumer dissatisfaction at the time of fulfillment of a preplanned funeral arrangement.[133]

Although the current Rule does not specifically discuss pre-need funeral arrangements, it does apply to both at-need and pre-need funeral transactions. The Rule requires funeral providers to make the appropriate disclosures at the time that funeral arrangements are made regardless of when the funeral goods and services will be required.[134] While pre-need shoppers are obviously not under the same stringent time constraints as at-need shoppers, the important objectives of increasing consumers' choices and awareness of price certainly apply to both types of transactions.[135]

Commenters agreed that pre-need sales are on the rise.[136] The AARP pointed to its 1999 survey results, showing that 44% of consumers pre-planned their funeral and 67% of those consumers pre-paid.[137] Several reasons were put forth for the rise in these types of transactions. It is possible that consumers are becoming better educated, do more comparison shopping, and thus make more advance arrangements. One commenter suggested that part of the increase could be attributable to the belief held by some consumers that they need to reduce their assets to qualify for certain income-based benefits.[138] Another possibility is that a greater number of solicitations stimulate a greater number of pre-need arrangements. In fact, according to another survey conducted for AARP, in 1999, 43% of the population more than 50 years of age reported being solicited about purchasing pre-need funeral arrangements.[139] Some commenters pointed to this increased activity and the increased potential for abuse as a reason to strengthen the Rule in this area.[140] Commenters urged two types of amendments: additional disclosures and protections against abusive practices.

a. Disclosures

A group of commenters supported amending the Rule to add disclosures specific to the sale of pre-need funeral arrangements. While suggesting that more consumers comparison shop for pre-need arrangements than for at-need arrangements, some commenters contended that the additional time does not necessarily translate to additional information.[141] In fact, these commenters claimed that pre-need consumers may routinely miss out on the Rule's benefits because funeral providers fail to make the required disclosures when dealing with consumers making pre-need funeral arrangements.[142]

In addition, some commenters advocated requiring disclosures about issues they deem critical to these transactions, such as interest payments, penalties for contract cancellations, and contract portability (or lack thereof).[143] However, commenters disagreed about who should address these issues, with some concluding that pre-need concerns

[130] The only comment suggesting disclosures are needed to counter deceptive statements came from FMS of GKC. FMS of GKC stated that some funeral providers tell consumers that homemade caskets or those purchased elsewhere must comply with ''any applicable state or cemetery requirement'' when there are no such requirements. Comment A-52, at 12. The Rule already forbids the practice of misrepresenting any such requirements, and it specifically requires a disclosure that: ''If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.'' 16 CFR 453.4(b)(2)(i)(B).

[131] 1990 Staff Report at 144-73.

[132] FR Notice, 64 FR at 24253.

[133] TR at 133-34.

[134] 16 CFR 453.2.

[135] Indeed, another objective—encouraging comparison shopping—may have even more of an impact on pre-need shoppers than on at-need shoppers.

[136] *See, e.g.*, AARP, Comment A-55, at 10, 22; FAMSA, Comment A-76, at 28.

[137] AARP, Comment A-55, at 22 (citing to their survey, ''Funeral and Burial Planners Survey,'' Washington, D.C., August 1999 at 11). These numbers showed a notable increase from the 1988 survey that indicated that 34% of consumers pre-planned their funerals, and 50% of those consumers pre-paid.

[138] Churchman, TR at 139-40.

[139] AARP, Comment A-55, at 22 (citing to ''Older Americans and Preneed Funeral and Burial Arrangements, Results from a National Telephone Survey,'' AARP, May 1999 at 3).

[140] *See, e.g.*, AARP, Comment A-55, at 22 (calling for uniform federal standards); Graham, TR at 134 (indicating that pre-need arrangements account for 30% to 40% of his funeral business); Kramer, TR at 135 (indicating that 32% of consumers aged 50 and older have prepaid for funeral services).

[141] *See, e.g.*, FMS of GKC, Comment A-52, at 7; AARP, Comment A-55, at 14; CANA, Comment A-58, at 12.

[142] *See, e.g.*, AARP, Comment A-55, at 10 (mentioning that some consumers are purchasing pre-need contracts over the Internet without ever seeing any disclosure documents); Kramer, TR at 136 (compliance with Rule at 67% to 75% for pre-need). *See also* Pinkerton, Comment A-63, at 3 (describing a pre-need marketing plan developed by a local group of religious cemeteries in conjunction with local funeral homes in which consumers purchase an insurance policy to fund a funeral but never see a General Price List).

[143] *See, e.g.*, B. Johnson, A-43, at 6; AARP, Comment A-55, at 23; FAMSA, Comment A-76, at 29.

are better left to state regulation,[144] while others argued that the Commission should include additional disclosures for pre-need contracts in the Rule.[145]

b. Abusive Practices

A number of commenters contended that pre-need transactions that involve advance payment have led to abusive practices.[146] One commenter suggested that deceptive statements are made regarding the cost savings of prepayment.[147] Some commenters suggested that consumers may be charged more money at the time of need even though the funeral arrangements were prepaid.[148] A number of comments from consumer groups further suggested that pre-need consumers are subject to lengthy, repetitive and/or high-pressured sales tactics, which may lead consumers to purchase more goods and services than needed.[149] Although pre-need transactions lack the time constraints and emotional factors associated with at-need transactions, these commenters urged the Commission to address directly pre-need practices in the Rule, to eliminate some of these ''predatory'' practices.[150]

On the other hand, a number of comments that addressed this issue stated that abuse in this area is not widespread, and that pre-need shoppers pay less than, or at least no more than, at-need shoppers.[151] For instance, a comment from a memorial society presented a survey showing that pre-need funeral transactions cost less than at-need funeral transactions.[152] Several potential reasons were suggested for the cost difference: perhaps, in general, consumers are more frugal when purchasing for themselves, and perhaps the more cost conscious consumers are the ones that opt for pre-need funeral transactions, and thus do more comparison shopping.[153]

c. Analysis

The Commission does not propose amending the Rule to address pre-need funeral arrangements specifically. First, there is insufficient evidence in the record to show that abusive practices in the sale of pre-need funeral arrangements are prevalent. Second, there is insufficient record evidence showing that federally-mandated disclosures specific to pre-need funeral arrangements will remedy any alleged injury to consumers.

In particular, the Commission does not propose to amend the Rule to impose disclosure requirements that are not already in the GPL. There is no question that the Rule's current requirements, including the provision of the GPL, apply to both at-need and pre-need funeral transactions. It is inappropriate to propose amending the Rule in the absence of evidence suggesting that a rulemaking proceeding would likely develop a record to support imposition of additional disclosures to remedy a prevalent deceptive or unfair act. Nothing in this record suggests that Section 5 of the FTC Act is inadequate to address such practices when and where they occur. Furthermore, a great variety of state laws address the sale of pre-need funeral plans. According to a report issued by the General Accounting Office in 2003, most states impose trusting and insurance requirements and impose state licensing or registration requirements on sellers of pre-need contracts.[154] State laws vary on the amount of refunds to which consumers are entitled if they cancel their funeral plans.[155] Because states have been active in regulating the sale of pre-need funeral arrangements, it is unclear that mandating additional disclosures at the federal level will remedy any perceived problem in this industry.

In sum, the evidence on the record, while suggesting that some sellers engage in deceptive conduct in the sale of pre-need funeral arrangements, is primarily anecdotal or simply conclusory, and falls well short of showing that deceptive or unfair practices are widespread in the industry. The Commission further notes that deceptive conduct by funeral providers selling prepaid funeral plans could be challenged under Section 5 of the FTC Act, 15 U.S.C. Sec. 45, in appropriate circumstances.

V. Conclusion

The evidence is strong that the Rule continues to benefit consumers and the industry, as a whole. The Commission appreciates the comments and evidence submitted in this regulatory review as it continues to further the Commission's understanding of the ways in which the industry is evolving. Having carefully considered the evidence and arguments made in support of amending the Rule to prohibit discounts, reinstate casket handling fees, revise the GPL requirements, expand the scope to cover cemeteries or other members of the funeral industry, and impose additional regulations on the sale of pre-need funeral contracts, the Commission declines to amend the Rule at this time. Because the industry is not static, the Commission welcomes additional comments about the effectiveness of the Funeral Rule.

List of Subjects in CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Donald S. Clark

Secretary

Appendix 1

Funeral Rule Review: Comments

Comment 1 George Silva, Competitive Caskets, Inc. (''Silva'')
Comment 2 James. M. St. George, ConsumerCasket USA, Inc. (''St. George'')
Comment 3 Maynard Cheris, Impressive Casket (''Cheris'')

[144] *See, e.g.*, FCSC, Comment 55, at 6; ICFA, Comment A-38, at 25-26; CANA, Comment A-58, at 13; NFDA, Comment A-56, at 89-90.

[145] *See, e.g.*, B. Johnson, A-43, at 6; AARP, Comment A-55, at 23; FAMSA, Comment A-76, at 29.

[146] Commenters pointed out the differences between funeral preplanning, which is common to all pre-need transactions, and prepaying, which is common to only some pre-need transactions. *See, e.g.*, ICFA, Comment A-38, at 21; AARP, Comment A-55, at 21-23.

[147] FCSC, Comment 55, at 6 (commenter, however, believes that this is a state issue). *See also* IFDA, Comment A-34, at 11-12 (noting deceptive statements from cemetery industry).

[148] *See, e.g.*, Leonard, Comment A-48, at 5; FMS of GKC, Comment A-52, at 7 (relating an anecdote that the only casket available cost $700 more than what had been arranged).

[149] *See, e.g.*, AARP, Comment A-55, at 23; FAMSA, Comment A-76, at 28-29; EJ, Comment A-79, at 4.

[150] *See, e.g.*, FAMSA, Comment A-76, at 29; Pinkerton, Comment A-63, at 3; Johnson, Comment A-43. One suggestion made by FAMSA is to impose a cooling-off period, to reduce the incidence of ''inappropriately aggressive sales practices. . .'' FAMSA, Comment A-76, at 29.

[151] *See, e.g.*, FEA, Comment A-10, at 6; Neel, A-14, at 8; ICFA, Comment A-38, at 21-22; FMS of GKC, Comment A-52, at 6-7; CANA, Comment A-58, at 9. *But see* FEA, Comment A-10, at 10-12; IFDA, Comment A-34, at 11-12 (two funeral home trade groups that believe the problems that exist in the pre-need setting relate to cemeteries, and not to funeral homes).

[152] FMS of GKC, Comment A-52, at 6-7 (mentioning the Funeral Information Project survey showing that the average cost of pre-need burial arrangement is $5,316 compared to $7,036 for at-need); FEA, Comment A-10, at 6 (based on 46,000 pre-need arrangements, the average cost is approximately $4,600, which is well-below the cost of at-need funerals). *See also* CANA, Comment A-58, at 9.

[153] FMS of GKC, Comment A-52, at 6-7; FEA, Comment A-10, at 7 (opining that some consumers are restricted in how much they can spend).

[154] *See* GAO Report, Death Care Industry, Regulation Varies Across States and by Industry Segment, August 2003, at 11-12 (stating that all 42 states responding to the GAO's survey reported that they regulate sales of pre-need funeral plans funded by trusts, and 34 responding states regulate all sales of pre-need funeral plans, including those funded by insurance). New York, for instance, permits only licensed funeral directors to sell pre-need funeral plans. *Id. See also* Carpenter, Comment 6, at 1 (pre-need sales in Nebraska are covered by Nebraska statutes).

[155] *Id.*

Comment 4 G. Tomlinson Stradling, III, Stradling Funeral Homes, Inc. (''Stradling'')
Comment 5 Cletus J. Hansen, State of Wisconsin Department of Regulation & Licensing (''WI DR&L'')
Comment 6 Thomas R. Burke, Catholic Cemeteries Archdiocese of Omaha (''Burke'')
Comment 7 George Silva, Competitive Caskets, Inc. (''Silva'')
Comment 8 Don Watters, Watters Cemetery Memorials (''Watters'')
Comment 9 Patrick Allen (''Allen'')
Comment 10 Kevin Gray, Direct Casket (2 E-mailed comments, 10a and 10b) (''Gray'')
Comment 11 Betty Brown, A Team Masters Casket Store (''Brown'')
Comment 12 Stewart David Greenlee (''Greenlee'')
Comment 13 Robert Ceremsak (''Ceremsak'')
Comment 14 Robert L. Creal, Licensed Funeral Director (''Creal'')
Comment 15 Caryl J. Arnet, Arnet's Inc. (''Arnet'')
Comment 16 Thiem Nguyen V., Tobia Casket (''Nguyen'')
Comment 17 Charles Graves, Evans Casket Store (''Graves'')
Comment 18 Evelyn and Richard Rapozo, American Casket Company (''Rapozo'')
Comment 19 Charles E. Schumer, United States Senate (''Senator Schumer'')
Comment 20 Clifford L. Hornsby, Jr. (''Hornsby'')
Comment 21 Hilton Peel (''Peel'')
Comment 22 FD1292, Licensed Funeral Director (''FD 1292'')
Comment 23 Tim Wilt (''Wilt'')
Comment 24 Kevin M. Bean, Licensed Funeral Director (''Bean'')
Comment 25 Howard S. Robertson, Funeral & Memorial Society of Monterey Bay (''FMS of MB'')
Comment 26 Don Fredrick, Funeral Director (''Fredrick'')
Comment 27 John T. McQueen, An independent funeral establishment (''McQueen'')
Comment 28 Inge W. Horowitz, Emek Sholom Holocaust Memorial Cemetery (''Horowitz'')
Comment 29 Sam J. Elkins, Funeral & Memorial Society of Chattanooga (''FMS of C'')
Comment 30 Brian L. Cotter, Davis Mortuary (''Cotter'')
Comment 31 Mercille Wells (''Wells'')
Comment 32 J. Duran Sellers, Licensed Funeral Director (''Sellers'')
Comment 33 Doris Sandy (''Sandy'')
Comment 34 Wye Hale-Rowe (''Hale-Rowe'')
Comment 35 Bruce N. Catlett (''Catlett'')
Comment 36 F. Leon Duke (''Duke'')
Comment 37 Susan G. Glaser, Glaser Enterprises, Inc. (''Glaser'')
Comment 38 Patricia Martin, M.S.W., Casket Royale of Kentucky (''Martin'')
Comment 39 George Silva, Competitive Caskets, Inc. (''Silva'')
Comment 40 Roy M. Smith (''Smith'')
Comment 41 William R. Noto, Eulogy International (''Noto'')
Comment 42 Charles A. Graham, Licensed Funeral Director/Registered Embalmer (''C. Graham'')
Comment 43 Donald M. Pence (''Pence'')
Comment 44 Abbey Memorial Association (''Abbey'')
Comment 45 Julius and Edith Falwell (''Falwell'')
Comment 46 Joseph Ernest Pray, Pray Funeral Home, Inc. (''Pray'')
Comment 47 Pamela Scott, Kansas Funeral Directors & Embalmers Assoc., Inc. (''KS FDEA'')
Comment 48 Maynard Cheris, National Casket Retailers Association, Inc. (''NCRA'')
Comment 49 Pat Graham, Graham Funeral Home (''P. Graham'')
Comment 50 Linda M. Johnson (''Johnson'')
Comment 51 Thomas Oswald, Oswald Memorials (''Oswald'')
Comment 52 David A. Kesner, Gendernalik Funeral Home, Inc. (''Gendernalik'')
Comment 53 Gerald H. (Skip) Mikell, Sr., Suburban Funeral Home, Inc. (''Mikell'')
Comment 54 Brian R. Davis, Directors Investment Group, Inc. (''DIG'')
Comment 55 James E. Peterson, Funeral Consumer Society of Colorado (''FCS CO'')
Comment 56 Edith S. Brower, New Jersey Division of Consumer Affairs (''NJ DCA'')
Comment 57 Billie Watson Hughes, The Independent Funeral Directors Association of the District of Columbia (''IFDA DC'')
Comment 58 Edith Churchman, Ph.D., National Funeral Directors and Morticians Association, Inc. (''NFDMA'')
Comment 59 Peggy F. Porter (''Porter'')
Comment 60 Philip L. Minard, Obsequy Associates, LLC (''Minard'')
Comment 61 Arthur R. Angel, Abel, Musser, Sokolosky Mares & Kouri (''Angel'')
Comment 62 John D. Vassar, Vassar-Rawls Funeral Home, Inc. (''Vassar'')
Comment 63 Robert R. Johnson (''R. Johnson'')
Comment 64 Ernest Landauer, Bay Area Funeral Society (''BAFS'')
Comment A-01[156] Edward Yee (''Yee'')
1. *Richard F. Cody*, Resthaven Memorial Gardens [Comment A-02]
2. *Jules Polonetsky*, New York City Department of Consumer Affairs [Comment A-03]
3. *William Withenmidt* [Comment A-04]
4. *Norma R. Rees* [Comment A-05]
5. *Jeffrey Spear*, Hansen-Spear Funeral Home (''Spear'') [Comment A-06]
6. *T. V. Picraux Jr.* [Comment A-07]
7. *John Armiger, Jr.*, Dulaney Valley Memorial Gardens & Mausoleum [Comment A-08]
8. *Frank David DeBor, Esq.*, DeBor Funeral Home, Inc. [Comment A-09]
9. *Robert W. Ninker*, Funeral Ethics Association (''FEA'') [Comment A-10]
10. *Glen V. Ayers*, State of California Cemetery and Funeral Program (''CA C&FP-1'') [Comment A-11]
11. *Dennis L. Goethe*, Schrader Funeral Home, Inc. [Comment A-12]
12. *Robert G. Donald*, Bay Area Burial Group (''BABG'') [Comment A-13]
13. *Harry C. Neel*, Jefferson Memorial Cemetery and Funeral Home (''Neel'') [Comment A-14]
14. *Val J. Franz* [Comment A-15]
15. *Apalm0226* (''Apalm'') [Comment A-16]
16. *Dean Magliocca*, Affordable Monuments & Caskets (''Magliocca'') [Comment A-17]
17. *Ernest C. Adams, Jr.*, Funeral Service Professional (''E. Adams'') [Comment A-18]
18. *Roger Adams* (''R.Adams'') [Comment A-19]
19. *William S. French, Jr.*, Virginia Cemetery Board (''VA CB'') [Comment A-20]
20. *John Levi* (''Levi'') [Comment A-21]
21. *Sam McKeever* [Comment A-22]
22. *Infinity Caskets* (''Infinity'') [Comment A-23]
23. *Jim Broussard Jr.*, Broussard's Mortuary (''Broussard'') [Comment A-24]
24. *Pete Van Wassberge, Jr.* [Comment A-25]
25. *Norma M. Vodanovich* [Comment A-26]
26. *G. Tomlinson Stradling III*, The International Order of the Golden Rule (''IOGR'') [Comment A-27]
27. *June J. Ordes* (''Ordes'') [Comment A-28]
28. *Kevin Gray*, Direct Casket (''Gray'') [Comment A-29]
29. *John E. Carpenter*, Diocese of Toledo (''Carpenter'') [Comment A-30]
30. *John O. Mitchell IV*, Mitchell-Wiedefeld Home, Inc. [Comment A-31]
31. *John G. McCune, Jr.* (''McCune'') [Comment A-32]
32. *Frederick H. Kitchen*, Funeral Director/Embalmer [Comment A-33]
33. *David T. Froelich*, Illinois Funeral Directors Association (''IFDA'') [Comment A-34]
34. *John S. Wallenstein*, New York State Monument Builders Association (''NYSMBA'') [Comment A-35]
35. *Kerry John Anzalone* [Comment A-36]
36. *Blanche Richardson* (''Richardson'') [Comment A-37]
37. *Irwin W. Shipper*, International Cemetery and Funeral Association (''ICFA'') [Comment A-38]*
38. *Ronald G. E. Smith, Ph.D.*, (On behalf of ICFA) (''Smith ICFA'') [Comment A-39]
39. *David Simich*, California Monument Association (''CMA'') [Comment A-40]
40. *Peter A. Stefan*, Graham, Putnam & Mahoney Funeral Parlors (''Stefan'') [Comment A-41]
41. *Walmck@aol.com*, (''Walmck'') [Comment A-42]
42. *Bradly T. Johnson*, Shultz-Vogel-Johnson Mortuary [Comment A-43]
43. *David Coughran*, [Comment A-44]
44. *Craig Brown*, (''C. Brown'') [Comment A-45]
45. *Blair Nelsen*, Nelsen Funeral Home (''Nelsen'') [Comment A-46]
46. *Barry Rubin*, The Casket Store (''Rubin'') [Comment A-47]
47. *Karen Leonard/Bob Treuhaft*, (On behalf of Jessica Mitford's The American Way of Death) (''Leonard'') [Comment A-48]
48. *Carter Wagoner*, (''Wagoner'') Advent Funeral and Cremation Services [Comment A-49]
49. *Doris Carlton*, [Comment A-50]
50. *Robert Karlin*, California Casket Retailers Association (''CCRA'') [Comment A-51]
51. *Mercedes Bern*-Klug, Funeral & Memorial Society of Greater Kansas City (''FMS of GKC'') [Comment A-52]*

[156] Note: All comments received after publication of the Federal Register Notice announcing the extension of the comment period were renumbered starting with 01. To avoid confusion, these comments will be designated as ''A-01,'' etc.

52. *Barry M. Taira*, Caskets & Urns For Less (''Taira'') [Comment A-53]
53. *Michael P.A. Cohen*, National Selected Morticians (''NSM'') [Comment A-54]*
54. *Jeff Kramer*, AARP [Comment A-55]*
55. *T. Scott Gilligan*, National Funeral Directors Association (''NFDA'') [Comment A-56]
56. *John M. Peterson*, Monument Builders of North America (''MBNA'') [Comment A-57]*
57. *Harry I. Lapin*, Cremation Association of North America (''CANA'') [Comment A-58]*
58. *Service Corporation International* (''SCI'') [Comment A-59]
59. *John O. Norquist*, Mayor, City of Milwaukee (''Mayor Norquist'') [Comment A-60]
60. *David N. Swim*, Casket Gallery Showrooms (''Swim'') [Comment A-61]
61. *David Lew*, The Casket Outlet [Comment A-62]
62. *James O. Pinkerton*, Orion C. Pinkerton Funeral Home, Inc. (''Pinkerton'') [Comment A-63]
63. *Robert Prestatt*, [Comment A-64]
64. *Dennis N. Britson*, North American Cemetery Regulators Association (''NCRA'') [Comment A-65]
65. *Bill Collier*, Collier Casket Co. (''Collier'') [Comment A-66]*
66. *Jed Hendrickson*, Santa Barbara Monumental Co., Inc. (''Hendrickson'') [Comment A-67]
67. *Richard Lamb*, Richard Lamb Funeral Service & Resource Center (''Lamb'') [Comment A-68]
68. *Larry Chedotal, Sr.*, Restlawn Park Cemetery & Mausoleum, Inc. (''Chedotal'') [Comment A-69]
69. *Charles E. Davis*, Association of Independent Funeral Directors of Florida (''AIFDF'') [Comment A-70]
70. *Robert C. Caudle*, (''Caudle'') [Comment A-71]
71. *William P. Conway*, Western Cemetery Alliance (''WCA'') [Comment A-72]
72. *William P. Conway*, Interment Association of California [Comment A-73]
73. *Wanda Upper*, Arborcrest Memorial Park & Chapel Mausoleum [Comment A-74]
74. *Betty Brown*, A-Team Casket Stores & National Casket Retailer's Association (''B. Brown'') [Comment A-75]*
75. *Lisa Carlson*, Funeral and Memorial Societies of America (''FAMSA'') [Comment A-76]*
76. *Carla J. Stovall*, State of Kansas, Office of the Attorney General (''KS OAG'') [Comment A-77]
77. *Kathie Milligan* [Comment A-78]
78. *Carolyn Jacobi*, Eternal Justice (''EJ'') [Comment A-79]*
79. *Morris Nilsen*, Minnesota Funeral Directors Association [Comment A-80]
80. *Elmer Feldheim*, [Comment A-81]
81. *Charles E. Evans*, John H. Evans Funeral Home (''Evans'') [Comment A-82]
82. *Don Kim*, Rainbow Casket Company (''Kim'') [Comment A-83]
83. *Stephanie Lawrence*, [Comment A-84]
84. *Thomas Crean*, Family Funeral Home Association (''FFHA'') [Comment A-85]
85. *Robert McAdams*, Twin Cities Cremation (''McAdams'') [Comment A-86]
86. *Larry Kaplan*, National Association of Consumer Agency Administrators (''NACAA'') [Comment A-87]
87. *Harold Goyette*, Lewis E. Wint and Son Funeral Home [Comment A-88]
88. *Richard F. Cody*, Resthaven Memorial Gardens [Comment A-89]

* **NOTE**: Not all referenced attachments are included in electronic form. Copies are available from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; 1-800-FTC-HELP.

Appendix 2

Participant List

Funeral Rule Review Workshop, November 18, 1999

A-55 Jeffrey A. Kramer, American Association of Retired Persons (AARP)
A-51 Robert Karlin, California Casket Retailers Association
A-61 David Swim, Casket Gallery Showrooms
A-11 G. V. Ayers, Cemetery & Funeral Program of the CA Dept. of Cons. Affairs (CFP-1 of CA)
A-58 Harvey Lapin, Cremation Association of North America (CANA)
54 Bill Seale, Directors Investment Group, Inc. (DIG)
A-79 Carolyn Jacobi, Eternal Justice
A-76 Lisa Carlson, Funeral and Memorial Societies of America (FAMSA)
A-10 Robert Ninker, Funeral Ethics Association (FEA)
Jonathan Siedlecki, FEA
A-52 Mercedes Bern-Klug, Funeral and Memorial Society of Greater Kansas City
49 Pat Graham, Graham Funeral Home (Graham)
A-38 Paul M. Elvig, International Cemetery and Funeral Association (ICFA)
57 Billie Watson Hughes, Independent Funeral Directors Assoc. of the District of Columbia (IFDADC)
A-27 Randall L. Earl, International Order of the Golden Rule (IOGR)
A-14 Harry Neel, Jefferson Memorial Cemetery and Funeral Home
A-57 John M. Peterson, Monument Builders of North America (MBNA)
A-87 Jennifer L. Rawls, National Association of Consumer Agency Administrators (NACAA)
48 Maynard Cheris, National Casket Retailers Association, Inc.
A-56 John Carmon, National Funeral Directors Association (NFDA)
T. Scott Gilligan, NFDA
A-54 George W. Clarke, National Selected Morticians (NSM)
58 Edith Churchman, Ph.D., National Funeral Directors & Morticians Association (NFDMA)
A-35 John S. Wallenstein, New York State Monument Builders Association (NYSMB)
A-63 James Pinkerton, Orion C. Pinkerton Funeral Home, Inc.
A-59 Glenn McMillen, Service Corporation International (SCI)

Appendix 3

Statements Made On The Public Record

Funeral Rule Review Workshop, November 18, 1999

Sylvia Brown, Greensboro, NC
Robert Creal, Creal Funeral Home, St. Petersburg, FL
Tom Crean, Family Funeral Home Assn., New Westminister, British Columbia, Canada
Gere Fulton, FCA-FAMSA, Board Member, Columbia, SC
Samuel Frain, Indiana Funeral Directors Assn., Frain Mortuary Inc., Winamac, IN
John R. Harmon, NFDA-MA, Tyler, TX
John Horan, Horan & McConaty Funeral Svc./Cremation, Aurora, CO
Deicie May James, Milwaukee, WI
David McComb, D.O. McComb & Sons, Ft. Wayne, IN
John McDonough, Electronic Funeral Service Assn., McDonough Funeral Home, Lowell, MA
Rev. Partick Pollard, Natl. Catholic Cemetery Conference, Hillside, IL
Eileen Santangelo, Evergreen Memorial Garden
Richard Santore, Today in Death Care, Kingsport, TX
Steven Sklar, Chairman, N.A.M. Cemetery Regulators Assn., Chair, Consumer Affairs, Baltimore, MD
Douglas Stowell, Funeral Services, Inc., Stowell, Anton & Kraemer, Tallahassee, FL
Shirley VanArsdale, NFDA, Gardner, KS

[FR Doc. E8–5065 Filed 3–13–08: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0040]

RIN 1218–AC08

Updating OSHA Standards Based on National Consensus Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; confirmation of effective date.

SUMMARY: OSHA is confirming the effective date of its direct final rule that revises a number of standards for general industry that refer to national consensus standards. The direct final rule states that it would become effective on March 13, 2008 unless OSHA receives significant adverse comment on these revisions by January 14, 2008. OSHA received no adverse comments by that date and, therefore, is confirming that the rule will become effective on March 13, 2008.