

LET IT LIE: THE UNINTENDED CONSEQUENCES OF CHANGING THE FUNERAL RULE

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INTRODUCTION

The Federal Trade Commission (FTC) created the Funeral Rule in the early 1980s in order to improve the funeral market and, more importantly, to protect consumers.¹ The Rule’s goals were to “lower existing barriers to price competition in the funeral market and to facilitate informed consumer choice.”² By requiring funeral providers to give consumers clear and accurate price information, the FTC hoped to protect consumers from being taken advantage of while in a

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1. FTC Funeral Industry Practices Rule, 47 Fed. Reg. 42260 (proposed Sept. 24, 1982) (codified as amended at 16 C.F.R. pt. 453) [hereinafter Funeral Rule].
2. *Id.*

vulnerable state.³ Further, the Rule prohibits providers from making certain misrepresentations to consumers and sets out other unfair or deceptive practices funeral providers may not use.⁴

The Rule was passed due to the sensitive nature of funeral industry services. When individuals contact funeral homes, it is usually because a loved one has passed away. In their state of grief, they must deal with their loved one's remains, plan a funeral, and make many other overwhelming decisions. In the FTC's eyes, this made consumers especially vulnerable to exploitation and left consumers operating "under a large burden of ignorance."⁵ The overall goal of implementing the Rule was to promote transparency between the funeral industry and consumers. The FTC wanted consumers to be able to make informed decisions during this difficult time.⁶

It is important for consumers to know what they are required by law to purchase, what is just an additional cost, and what their options are when it comes to honoring their loved ones. The FTC found that there were three reasons for the Rule: (1) the decisions regarding funeral goods and services are made when the consumer is in emotional distress; (2) consumers are not knowledgeable about the funeral industry; and (3) the decisions are costly ones which must be made within a time restraint.⁷ When the Rule was passed, the FTC believed that consumers had inaccurate information on prices and services and were unlikely to seek such information in a state of grief and distress.⁸ Consumers, unaware of what they wanted, were subject to funeral directors misrepresenting the law and "induc[ing] consumers to purchase goods and services they d[id] not desire."⁹

Specifically, the Rule prohibits funeral homes from "misrepresenting legal, crematory, and cemetery requirements," some of which include embalming for a fee without permission, requiring the purchase of a casket for direct cremation, requiring that consumers buy certain goods or services as a condition for others, and engaging in any other deceptive or unfair practices.¹⁰ The FTC believed the Rule would "increase[] consumer satisfaction by lowering prices and reducing the quantities of undesired goods purchased."¹¹

3. *See id.*

4. *See id.*

5. Fred S. McChesney, *Consumer Ignorance and Consumer Protection Law: Empirical Evidence from the FTC Funeral Rule*, 7 J.L. & POL. 1, 6 (1990).

6. *The FTC's Funeral Rule: Helping Consumers Make Informed Decisions During Difficult Times*, FED. TRADE COMM'N (2024), <https://perma.cc/VF8S-X8PX>.

7. McChesney, *supra* note 5, at 6.

8. *Id.*

9. *Id.* at 8.

10. FED. TRADE COMM'N, *COMPLYING WITH THE FUNERAL RULE 1* (2019), <https://perma.cc/S2R6-5F6H>.

11. McChesney, *supra* note 5, at 20–21.

However, there are disagreements in the industry about the Rule's place today, as some studies have shown that consumers are generally satisfied with their purchases and appreciate the guidance from the funeral director.¹²

Recently, the FTC has considered changing the Rule. Now that the FTC is considering a change, proponents of the Rule in its current form are clashing with advocates who desire reform.

Some advocates argue that the Rule must be updated in order to more accurately reflect how consumers receive information today;¹³ still, others worry about the unintended consequences that could come with these alterations.¹⁴ Specifically, some funeral industry providers are resistant to change and argue that consumers are already satisfied with the death care they receive, the Rule is still adequately protecting consumers, and more harm than good could come from updating the Rule due to the unintended consequences of federal regulation.¹⁵

The specific changes the FTC is considering include requiring online disclosures of price information, including new forms of human disposition in the regulation, and updating the requirements of General Price Lists (GPLs) to address common issues.¹⁶ While all these possible changes have prompted conversations within the funeral industry, the FTC and consumers are mainly concerned with the requirement of online price disclosures.¹⁷ Therefore, this Essay will focus on the possible change to the Funeral Rule requiring funeral service providers to disclose their prices online.

I. THE FUNERAL RULE HAS STOOD THE TEST OF TIME

Funeral industry providers who oppose a change to the Rule point out that, for the past forty years, the Funeral Rule has served its purpose of requiring transparency from funeral providers and argue that it continues to do so.¹⁸ The purpose of the Rule is to

12. *Id.* at 21.

13. See Adam Gottschalk, *Giving Up the Ghost: How the Funeral Rule and State Licensing Boards Are Failing to Protect Consumers from Underhanded Undertakers*, 27 ELDER L.J. 423, 445–46 (2020).

14. See Int'l Cemetery, Cremation & Funeral Ass'n, Comment Letter on Funeral Rule Regulatory Review, 16 C.F.R. pt. 310, Project No. P034410, at 29–30 (June 15, 2020) [hereinafter ICCFA Comment Letter], <https://perma.cc/26EF-2G8W>.

15. See *id.* at 6–8.

16. Public Workshop Examining Potential Amendments to the Funeral Rule, 88 Fed. Reg. 33011 (proposed May 23, 2023) (to be codified at 16 C.F.R. pt. 453).

17. In a survey of over 2,000 Americans, 75% reported funeral homes should be required to post online price disclosures. Herb Weisbaum, *UPDATE: FTC May Require Funeral Homes to Disclose Prices on Their Websites*, CONSUMERS' CHECKBOOK (Oct. 26, 2022), <https://perma.cc/CX7P-UCC7>.

18. See Funeral Rule, *supra* note 1; ICCFA Comment Letter, *supra* note 14, at 4–5.

prohibit any practices that are deceptive or cause harm to the consumer; requiring price disclosures, as the current Rule does, already satisfies this concern.¹⁹ Those against changing the Rule argue that the Rule, as written, already achieves its intended purpose and can be interpreted to deal with the new issues that arise.²⁰ To understand how the Rule has stood the test of time, the funeral industry points to the Rule's continued interpretation in light of technological advancements.²¹ Although the world has changed drastically since the Rule was enacted, this does not mean that it cannot still be followed in its current form. As times change, so can the interpretation of the Rule. Evidence shows that technological changes "have not created deceptive acts or unfair practices."²² Advocates for the Rule to remain in its current form also point out that funeral providers still have the option to post price lists online.²³ As the market naturally increases demand for online prices, funeral providers will naturally provide these options without need for new or updated regulations.²⁴ A review of online pricing information by the FTC in 2022 showed that of the 200 websites viewed, 39% had some information about prices.²⁵ The market will likely continue driving this number up as more funeral providers begin to utilize websites for price disclosure.

The funeral industry's belief that the Funeral Rule can still be interpreted in the wake of modern advancements is evidenced by *United States v. Funeral & Cremation Group of North America*.²⁶ There, the Department of Justice and FTC filed a complaint against a funeral director and his funeral service companies for "misrepresenting their location and prices, illegally threatening and failing to return cremated remains to consumers, and failing to provide disclosures required by the Funeral Rule."²⁷ Although the defendants posted prices online, they charged customers significantly more than the listed price.²⁸ Despite the defendants' use of online advertising to post their prices (a technology not in popular use at the time the Rule was originally written), the Rule, as it is currently

19. See ICCFA Comment Letter, *supra* note 14, at 7.

20. See *id.* at 4.

21. See *id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. LINA M. KHAN ET AL., SHOPPING FOR FUNERAL SERVICES ONLINE: AN FTC STAFF REVIEW OF FUNERAL PROVIDER WEBSITES 6 (2022), <https://perma.cc/E29Y-VZC7>.

26. No. 22-cv-60779-CIV, 2023 WL 2889518 (S.D. Fla. Mar. 6, 2023).

27. See Press Release, Fed. Trade Comm'n, Federal Trade Commission Alleges Funeral and Cremation Services Companies and Their Owner Misled Consumers About Their Location and Prices, and Withhold Remains to Extract Payment (Apr. 22, 2022), <https://perma.cc/BP9P-446J>.

28. *Id.*

written, allowed the Department of Justice to penalize the funeral providers.²⁹ The district judge ordered a permanent injunction requiring the defendants to comply with the Rule and ordered them to pay a \$275,000 penalty for the violations.³⁰ The Rule in its current form already requires providers to be transparent and addresses the use of deceptive online pricing.³¹ This case makes clear that the Funeral Rule has stood the test of time.

The Rule has also stood the test of time when it comes to adapting to consumer behavior. One funeral industry association, the International Cemetery, Cremation & Funeral Association (ICCFA), noted that as the funeral industry “grows and transforms, it is naturally evolving based on the current Funeral Rule guidance as well as consumer expectation.”³² According to data from the FTC, consumers are not dissatisfied with their death care.³³ In 2021, complaints from the funeral industry comprised only 0.02% of all complaints received by the Consumer Sentinel Network, which collects millions of consumer complaints from various agencies, including the FTC, AAR, Better Business Bureau, and state attorneys general offices.³⁴ In 2018, Johnson Consulting Group conducted a comprehensive analysis of data from the funeral industry.³⁵ When consumers were asked about their overall satisfaction with their funeral experiences, 96% said their experience was “superior” or “above average.”³⁶

Therefore, from the industry’s point of view, based on data directly from consumers, today’s overall business practices related to price disclosure are not deceptive and do not cause harm to the consumer. Since consumers are satisfied with their experiences with funeral providers, there may not be a need to update the Funeral Rule. Although some advocates argue that online pricing should be required, the Rule as it is already written requires providers to furnish accurate pricing information and still accomplishes the goal of transparency.³⁷ Pursuant to the Rule, funeral providers must give pricing lists to consumers, but they can do this in person, over email, over the phone, or with an online post. This flexibility allows funeral

29. See *Funeral & Cremation Grp.*, 2023 WL 2889518, at *5–9.

30. *Id.* at *5.

31. See Funeral Rule, *supra* note 1, at 42,269, 42,281; see also Katharine M. Rudish, *Unearthing the Public Interest: Recognizing Intrastate Economic Protectionism as a Legitimate State Interest*, 81 *FORDHAM L. REV.* 1485, 1507 (2012).

32. ICCFA Comment Letter, *supra* note 14, at 4.

33. See FED. TRADE COMM’N, *CONSUMER SENTINEL NETWORK: DATA BOOK 2021*, at 84, 86 (2022), <https://perma.cc/WP5G-4EDW>.

34. *Id.* at 7.

35. 4 JOHNSON CONSULTING GRP., *PERFORMANCE TRACKER ANALYSIS: 2019 TRENDS AND INSIGHTS ARTICLE 1–2* (2019), <https://perma.cc/4DEY-2M7N>.

36. *Id.* at 2.

37. ICCFA Comment Letter, *supra* note 14, at 7.

providers to use their discretion to make business decisions about what method is best for them and their customers.

Further, price is not usually the primary reason consumers choose a funeral home.³⁸ Between 2016 and 2018, only 7–8% of consumers said price was the primary reason for choosing a funeral home.³⁹ Rather, most consumers report that their choice is primarily based on prior experiences with that funeral home.⁴⁰ After prior experience, the next most common reason a person selects a funeral home is its convenient location.⁴¹ Price's low priority among consumers when choosing their funeral provider supports the industry's argument that consumers do not shop around for funeral homes and are not concerned about prices being posted online.⁴²

The Rule, adapting to consumer demand and remaining applicable today, has stood the test of time. Currently, consumers are satisfied with the death care they receive, and as consumer demand for online pricing increases, funeral providers will adjust accordingly. Although the Rule was written before the advent of the internet, the Rule, as written, can still apply today.

II. UNINTENDED CONSEQUENCES OF CHANGING THE FUNERAL RULE

Those in favor of the Funeral Rule remaining the same are concerned about possible unintended consequences of altering the Rule. Unintended consequences are an inescapable part of regulatory intervention.⁴³ Often, when regulators become involved in an industry with which they are unfamiliar, they do not consider the negative repercussions of regulation.⁴⁴ Specifically, there is a concern over regulations that are based on incorrect assumptions about how the particular market works. This can lead to an increased risk that the costs of regulation will outweigh the benefits.⁴⁵ Many funeral service providers share this concern, in large part due to the complicated nature of the industry itself.⁴⁶ In the eyes of the funeral

38. JOHNSON CONSULTING GRP., *supra* note 35, at 6.

39. ICCFA Comment Letter, *supra* note 14, at 7–8.

40. JOHNSON CONSULTING GRP., *supra* note 35, at 6.

41. *Id.*

42. See ICCFA Comment Letter, *supra* note 14, at 7–8.

43. George S. Ford, *Antitrust Reform and the Law of Unintended Consequences*, YALE J. ON REGUL. (Jan. 7, 2022), <https://perma.cc/E8B4-MYTR>.

44. See, e.g., McChesney, *supra* note 5, at 41 (describing an instance where a costly rule promulgated by the FTC “entailed no benefits”).

45. *Id.*

46. The funeral industry is riddled with confusing licensing requirements which come at a high-cost barrier to entry and “a conflict between changing social norms of what people want and what the industry is willing and able to give them.” *Regulations, Market Dynamics Changing Funeral Business*, BLADEN J. (Oct. 31, 2017), <https://perma.cc/F55T-WFW7>.

industry, the FTC is attempting to regulate an issue that has already been adequately regulated with the original Funeral Rule.

The unintended consequences of regulatory intervention create serious issues. For example, lawmakers intending to regulate Amazon and other “covered platforms” in their interactions with third-party sellers did not consider the unintended consequences of a new antitrust law.⁴⁷ Under that law, in the event of unequal treatment of a third-party seller, the covered platforms would be presumed guilty and required to prove their innocence.⁴⁸ Since Amazon has millions of third-party sellers, this creates huge risks for the company, especially because it comes with a fine of “up to 15% of total revenue for the time of the alleged infraction.”⁴⁹ Unfortunately, due to the “vague standards, presumed guilt, and high financial stakes,” companies like Amazon would rather stop working with third-party sellers than be subject to the regulation.⁵⁰ This would have detrimental effects on those third-party sellers, the consumers who use Amazon, and ultimately the economy.⁵¹

Another example of an ongoing issue with the unintended consequences of regulation involves the Children’s Online Privacy Protection Act (COPPA) expansion in 2012. COPPA was originally passed in 1998 to protect children by requiring certain online privacy protections for minors younger than thirteen.⁵² The updated law required certain sites “directed at children” to obtain parental consent before collecting personal information.⁵³ The requirement did not work as intended. It was confusing and overly broad. Consequently, it has resulted in parents helping their children lie about their age and companies steering clear of directing their websites at children to avoid liability.⁵⁴ The regulation, which was supposed to protect children, has led to frustrated parents who ultimately want the final say in what website their child can use and would prefer an age rating system over the federal regulation’s requirements.⁵⁵

Another example comes from the food industry. A federal law enforced by the Food and Drug Administration (FDA) required that sesame be labeled as an allergen.⁵⁶ While the law seemed simple enough, it resulted in manufacturers adding sesame to products and

47. Ford, *supra* note 43.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Adam Thierer, *The Unintended Consequences of Well-Intentioned Privacy Regulation*, FORBES (Nov. 8, 2011), <https://perma.cc/R7U3-AGC6>.

53. *Id.*

54. *Id.*

55. *Id.*

56. Jonel Aleccia, *New Label Law Has Unintended Effect: Sesame in More Foods*, ASSOCIATED PRESS (Dec. 21, 2022), <https://perma.cc/Q7GM-2SVZ>.

labeling them as such rather than implementing additional practices to prevent cross-contamination.⁵⁷ Instead of alerting those with sesame allergies to foods that could be harmful, the law made it so more products contain sesame, and those with allergies have fewer options.⁵⁸ Restaurants like Olive Garden, Chick-fil-A, and Wendy's changed their traditional recipes to include sesame.⁵⁹ Although this example is not a regulation enacted by the FTC, it still illustrates the absurd consequences that can come from simple federal regulation.

These examples demonstrate that even though new regulations have good intentions, they often backfire and cause more harm than good. As the FTC considers updating the Funeral Rule, it should be aware of the possible unintended consequences that could come from these changes. While there are some areas of the Rule that need updating and clarification, it must be done in a way that does not eventually harm consumers with increased prices or drive smaller funeral homes out of business.

Funeral & Cremation Group discusses several of these potential unintended consequences. There, a funeral provider used online price disclosures to deceive consumers.⁶⁰ The funeral provider advertised itself as a crematory, so when a potential customer searched for a crematory in the area, the provider's website was one of the first suggestions.⁶¹ However, the provider actually arranged services "potentially hours away" from the consumer seeking locations nearby.⁶² The website also listed costs that did not reflect the actual cost the consumers ended up paying; the real costs were usually substantially higher.⁶³ Besides the website, the funeral provider also gave misleading information over the phone and did not fully disclose all of the fees or costs of the services.⁶⁴

This case illustrates that online pricing information can be used to trick and mislead consumers. The requirement of online price disclosures may encourage more providers to take advantage of

57. *Id.*

58. *Id.*

59. *Id.*

60. See Press Release, Fed. Trade Comm'n, FTC Action Leads to Civil Penalties, Strict Requirements for Funeral and Cremation Provider that Withheld Remains from Loved Ones to Extract Payment (Apr. 7, 2023), <https://perma.cc/ZF4W-PNT5>.

61. See Complaint at 6, United States v. Funeral & Cremation Grp. of N. Am., LLC, No. 22-cv-60779-CIV (S.D. Fla. Apr. 22, 2022).

62. Ann Carrns, *Funeral Homes Don't Have to List Online Prices. That May Change.*, N.Y. TIMES, <https://www.nytimes.com/2023/04/14/your-money/funeral-homes-prices-online.html> (Apr. 17, 2023).

63. See Complaint, *supra* note 61, at 11–14.

64. *Id.* at 12–13.

“search engine marketing”⁶⁵ and use other online advertising practices that confuse consumers. If the new FTC rule requires online price disclosures, funeral provider success will depend on who pays the search engine the most. In the case above, the funeral provider was one of the first suggestions to populate after a search, and it used that advantage to generate more business while also deceiving consumers as to its location.⁶⁶ Further, viewing pricing information online deprives the consumer of the human component of a funeral professional being there to explain how the pricing works.

While the funeral provider in *Funeral & Cremation Group* failed to comply with multiple parts of the Rule, amending it to demand online prices may not fix the problem. A website with prices may still be misleading and deceptive. If a funeral provider is going to violate the Funeral Rule, it can do that whether its prices are required to be posted online or not. Instead of spending resources updating Rule, the FTC could issue helpful guidance on how to comply with the existing Rule for those providers who do choose to use websites to post their prices. Clarifying guidance would help providers understand the law and also indicate that the Rule is interpreted to apply to advancements in technology and will continue to be enforced.

Impact to consumers is one of the most concerning potential consequences of the Rule. Even after it was first passed, the Rule failed to lower prices; consumer spending actually increased.⁶⁷ Altering the Rule could have a similar impact since compliance with new regulations is costly, and these costs may be “passed to consumers in the form of higher prices.”⁶⁸ Some funeral providers may not even have a website and will need to take the time to build one and ensure they are not violating the Rule with how they post their prices. As funeral directors devote more time to ensuring compliance with the updated Rule, their attention may shift away from other areas of concern for consumers.⁶⁹

While all consumers are impacted by increased regulations, “poorly designed regulatory regimes . . . have especially negative, avoidable effects on poor individuals.”⁷⁰ As high-income purchasers

65. Search engine marketing is when businesses pay a search engine like Google to increase the visibility of their website by having it populate earlier in the search results. Leeron Hoory, *The Ultimate Guide to Search Engine Marketing (SEM) in 2024*, FORBES ADVISOR (Apr. 17, 2024), <https://perma.cc/ZVU9-AHFL>.

66. Complaint, *supra* note 61, at 7–8.

67. See McChesney, *supra* note 5, at 48.

68. *Id.* at 58 (citation omitted).

69. See *id.* at 63.

70. Dustin Chambers, *The Human Cost of Regulations and Some Possible Solutions*, MERCATUS CTR. 1 (Nov. 2022), <https://www.mercatus.org/research/policy-briefs/human-cost-regulations-and-some-possible-solutions>.

are the primary consumers participating in the economy, sellers tend to cater to their preferences. Not only does this drive the price of goods and services, but it also impacts what regulations are enacted. As low-income individuals participate less in consumerism, regulations are created without fully considering these individuals.⁷¹ When regulations are not judiciously created, low-income individuals are the ones who will suffer the most from the unintended consequences of federal regulation.⁷²

Another concern from the funeral industry is that changes will increase consumer confusion.⁷³ For example, many funeral homes use third parties for services like cremation but have no control over those prices, which can vary greatly depending on the complexity of the consumer's request.⁷⁴ In this situation, it would be confusing to simply have these prices, which fluctuate based on the situation, posted online without a funeral director to explain how these third-party costs work.⁷⁵ Although funeral providers may not intend to confuse or deceive the consumer, deception is more likely when there is no one to explain the costs.

The alteration of the Funeral Rule would also likely impact the economy. Implementing new or updated federal regulations is costly and will increase prices. As the U.S. Department of Commerce points out, unnecessary regulations are "harmful to the economy."⁷⁶ It is widely accepted that regulations have "negative impacts on commerce and economic growth," and growth is already a concern in the slowing funeral industry.⁷⁷ Therefore, there is a likelihood that the unnecessary changes to regulation will increase the price of funeral goods and services and, in doing so, harm the economy. Additionally, there is a likelihood that providers will simply choose to remove themselves from the industry to avoid these heightened regulations. The end result would mean fewer choices for consumers, and reduced choices would negatively impact competition. This harm to consumers is a major issue for the FTC, as the FTC believes in the principle that "[c]ompetition in America is about price, selection, and service. It

71. McChesney, *supra* note 5, at 70.

72. *Id.*

73. ICCFA Comment Letter, *supra* note 14, at 1.

74. Chris Farmer, *FTC Review of the Funeral Rule: What NFDA Is Doing and How We Need Your Help!*, NAT'L FUNERAL DIRS. ASS'N (Jan. 2, 2023), <https://perma.cc/3E3R-3JRY>.

75. Nat'l Funeral Dirs. Ass'n, Comment Letter on Funeral Rule Regulatory Review, 16 C.F.R. pt. 310, Project No. P034410 (Oct. 10, 2023) [hereinafter NFDA Comment Letter], <https://perma.cc/MV2Q-VJBC>; ICCFA Comment Letter, *supra* note 14, at 1.

76. *Regulatory Reform*, U.S. DEP'T COM. (2024), <https://perma.cc/47VE-LTVL>.

77. Chambers, *supra* note 70, at 1; Sara Marsden-Ille, *The US Funeral Industry Today*, US FUNERALS ONLINE (Mar. 22, 2023), <https://perma.cc/5CCC-52F2>.

benefits consumers by keeping prices low and the quality and choice of goods and services high.”⁷⁸

Lastly, there may also be unintended consequences affecting the funeral industry itself. As discussed, compliance with the updated Rule will increase costs for funeral services. Some funeral providers will need to build a website, hire someone to update the website as prices change, and diligently keep track of any other new requirements.⁷⁹ This, in combination with many funeral providers’ use of third-party services, would result in a need for providers to keep up with fluctuating prices “on a constant basis based on forces outside their control.”⁸⁰ Since small funeral providers might lack the resources or technology for this, the regulation would unfairly advantage larger players in the funeral industry.⁸¹ As shown by *Funeral & Cremation Group*, funeral providers with more money can pay to have their websites appear among the first results on search engines, while smaller funeral homes would be buried in the search results.⁸² In addition, if a funeral provider did err and forget to update a price, the provider could face a fine of \$51,744 per violation.⁸³ This increased chance of penalty could put smaller funeral homes out of business.⁸⁴

Forced advertising is another concerning potential impact of an updated Funeral Rule. The ICCFA views the online price requirement as forcing funeral providers into advertising.⁸⁵ In its comment to the FTC, the ICCFA notes that many funeral homes use websites not as advertisements, but simply as a way to convey information to consumers regarding location, contact information, history, and scheduling. Under the new Rule, these informational websites would be forced to transform into advertisements that disclose and explain all pricing.⁸⁶ The ICCFA worries that this regulation might extend beyond websites to require price disclosures on other forms of communication used by funeral providers.⁸⁷

Additionally, it cannot be ignored that the funeral industry is experiencing a labor shortage and a decline in profits.⁸⁸ Nearly half

78. FED. TRADE COMM’N, COMPETITION COUNTS 1 (2015), <https://perma.cc/CG4E-MZER>.

79. NFDA Comment Letter, *supra* note 75, at 8.

80. *Id.* at 11–12.

81. ICCFA Comment Letter, *supra* note 14, at 21.

82. *See* NFDA Comment Letter, *supra* note 75, at 3.

83. FED. TRADE COMM’N, *supra* note 10.

84. *See* ICCFA Comment Letter, *supra* note 14, at 23–24.

85. *Id.* at 9.

86. *Id.* at 9–10.

87. *See id.*

88. Bridget Frame, *More Than 60% of Funeral Directors Nationwide Are About to Retire. Do You Want This Job?*, CAROLINA NEWS & REP. (Apr. 20, 2023), <https://perma.cc/Y24L-4GR2>. In 2023 it was reported that the “average profit from a funeral was down by 37%.” Marsden-Ille, *supra* note 77.

of current funeral directors plan to retire in the next five years, and less than 25% of them have a plan for succession.⁸⁹ The barrier to entry into the funeral industry is already high, and more confusing regulations will repel new professionals from the industry. Furthermore, most funeral homes are “small and family-owned businesses, not corporate consolidators”; they could be put out of business with just one violation.⁹⁰ As more and more small funeral homes are put out of business by prohibitively high fines, fewer people will be willing to work in the industry.

CONCLUSION

The Funeral Rule was enacted to promote transparency for consumers who, while in a time of grief, must make difficult and expensive choices.⁹¹ The funeral industry believes that the Rule has stood the test of time and still adequately serves its purpose.⁹² Those in favor of the Rule remaining the same point out that consumers are satisfied with their death care, and the Rule can be interpreted to apply to the changes of modern society.⁹³

Moreover, updating the Funeral Rule could result in unintended consequences that negatively impact consumers, the economy, and the funeral industry. The Rule does not need to be updated; it is flexible and can be interpreted according to present circumstances. Even when the Rule was first issued, it did not accurately address the problems or understand consumer behavior.⁹⁴ To alter and add to the Rule without fully understanding if consumers are even concerned about this issue may lead to unintended consequences harming consumers and putting small funeral homes out of business.

Funeral providers have been following the Rule for the past forty years, and those who fail to follow it today are disciplined accordingly. Updates could confuse both consumers seeking services and providers trying to comply with the new regulations. Instead of updating the regulations, the FTC could provide additional guidelines for funeral providers who want to list their prices online. That way, consumers would still receive transparent and accurate price information from providers.

89. *Plan for Prosperity with Foresight and Johnson Consulting*, NAT'L FUNERAL DIRS. ASS'N (June 6, 2024), <https://perma.cc/CKQ8-6AEJ>; Hannah LaClaire, *Death Becomes Her: The Future of Funeral Home Work Is Female*, PORTLAND PRESS HERALD (Dec. 2, 2023), <https://perma.cc/C763-VRV3>.

90. NFDA Comment Letter, *supra* note 75, at 24.

91. *The FTC's Funeral Rule*, *supra* note 6.

92. *See* ICCFA Comment Letter, *supra* note 14, at 7.

93. *See id.* at 5; *see also* NFDA Comment Letter, *supra* note 75, at 6.

94. *See* McChesney, *supra* note 5, at 23–25.