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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Rule

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is considering whether to initiate a rulemaking proceeding to amend its Trade Regulation Rule entitled “Funeral Industry Practices Rule” (“Funeral Rule” or “Rule”). The Rule defines unfair and deceptive practices in the sale of funeral goods and services and prescribes preventative requirements to protect against these practices. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Comments must be received on or before January 3, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Instructions for Submitting Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write “Funeral Rule ANPR, Project No. P034410” on your comment, and file your comment online at <https://www.regulations.gov>. If you prefer to file on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Melissa Dickey, (202) 326-2662, mdickey@ftc.gov, or Rebecca Plett, (202) 326-3664, rplett@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is publishing this document pursuant to Section 18 of the Federal Trade Commission (“FTC”) Act, 15 U.S.C. 57a, and the provisions of Part 1, Subpart B of the Commission’s Rules

of Practice, 16 CFR 1.7 through 1.20, and 5 U.S.C. 553. This authority permits 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)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Commission issued the Funeral Rule on September 24, 1982, and it became fully effective on April 30, 1984.¹ The Funeral Rule’s goals are to lower barriers to price competition in the funeral goods and services market and to facilitate informed consumer choice.² The Rule helps to achieve these goals by ensuring that: (1) consumers have access to sufficient information to permit them to make informed decisions; (2) consumers are not required to purchase goods and services that they do not want and are not required by law to purchase; and (3) misrepresentations are not used to influence consumers’ decisions.³

Among other things, the Rule specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods or services used in connection with the disposition of deceased human remains;⁴ (2) condition the furnishing of any funeral good or funeral service upon the purchase of any other funeral good or funeral service or charge a fee as a condition to furnishing any goods or services, such as a “casket handling” fee to consumers who provide their own casket;⁵ or (3) embalm the deceased for a fee without authorization when

embalming is not required by law.⁶ The Rule also specifies that it is a deceptive act or practice for a funeral provider to misrepresent certain legal or cemetery requirements, including those for embalming, caskets, or burial containers, or any other funeral good or service.⁷

The Rule sets forth preventative requirements in the form of itemized price and information disclosures to ensure funeral providers do not engage in the unfair or deceptive acts or practices described in the foregoing paragraph. First, the Rule requires funeral providers to give persons inquiring in-person about funeral goods or services a General Price List (“GPL”) to keep, which lists the goods and services they offer and their itemized prices, along with specific disclosures.⁸ Second, the Rule requires funeral providers to show persons inquiring in-person a Casket Price List (“CPL”) identifying the caskets and alternative containers they carry, and an Outer Burial Container Price List (“OBCPL”) listing the vaults and grave liners they offer, along with specific disclosures.⁹ Third, funeral providers are required to tell persons “who ask by telephone about the funeral provider’s offerings or prices . . . any accurate information” from the GPL, CPL, or OBCPL, “and any other readily available information that reasonably answers the question.”¹⁰ Fourth, the Rule requires funeral providers to give an itemized statement showing all the items a customer has selected and the itemized and total costs for those goods and services, along with other specific disclosures, at the conclusion of the discussion of arrangements.¹¹

II. Regulatory Review of the Funeral Rule

On February 14, 2020, the Commission initiated a review of the Rule.¹² The Commission solicited comments on, among other things: (1)

⁶ 16 CFR 453.5(a).

⁷ See 16 CFR 453.3 through 453.5 (listing additional unfair and deceptive acts and preventative requirements).

⁸ 16 CFR 453.2(b)(4).

⁹ 16 CFR 453.2(b)(2)-(3).

¹⁰ 16 CFR 453.2(b)(1).

¹¹ 16 CFR 453.2(b)(5).

¹² Rule Review 2020, 85 FR 8490 (Feb. 14, 2020), available at <https://www.federalregister.gov/documents/2020/02/14/2020-02803/funeral-industry-practices-rule>.

¹ Portions of the Rule became effective on January 1, 1984, and others became effective on April 30, 1984. 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984). Several funeral providers challenged the Rule, but it was upheld by the Fourth Circuit. *Harry and Bryant Co. v. FTC*, 726 F.2d 993 (4th Cir.), cert. denied, 469 U.S. 820 (1984). The Rule was amended on July 19, 1994 (59 FR 1592 (Jan. 11, 1994)), and the Third Circuit upheld the amended Rule following a challenge. *Pennsylvania Funeral Directors Ass’n, Inc. v. FTC*, 41 F.3d 81, 83 (3d Cir. 1994). On March 14, 2008, the Commission completed a regulatory review and concluded that the Rule was still needed and should be retained. 73 FR 13740 (Mar. 14, 2008).

² Original Funeral Rule Statement of Basis and Purpose, 47 FR 42260 (Sept. 24, 1982).

³ *Id.*

⁴ 16 CFR 453.2(a).

⁵ 16 CFR 453.4(b).

the economic impact of, and the continuing need for, the Funeral Rule; (2) the Rule's benefits to consumers; and (3) the burden it places on industry members subject to the requirements, including small businesses. The Commission also asked specific questions about a number of topics, including whether funeral providers should be required to post their price list information online.

The Rule Review generated significant interest, receiving 785 comments.¹³ The vast majority (689 comments) came from individuals. Most commenters expressed support for the Rule.¹⁴ Commenters credited the Rule with improving consumers' ability to make informed decisions.¹⁵ Two associations stated that the Rule facilitates consumer choice.¹⁶ Another commented that the Rule "level[s] the playing field" for funeral providers, protects consumers from bad actors, and "serves as an enforcement mechanism."¹⁷ Commenters also reported that the Rule facilitates price transparency, gives consumers "a clearer idea of the services they are purchasing" and the prices for those services, and allows consumers to select only the items they

want to buy.¹⁸ One group also claimed that the Rule acts as a restraint on price gouging.¹⁹ In addition, one trade group stated that the Rule encouraged funeral providers to become better businesses by forcing them to "examine their costs, prices, and profits."²⁰

Based on the comments received in response to the Rule Review, along with the prior rulemaking records and the Commission's experience enforcing the Rule, the Commission has determined the Rule continues to serve a useful purpose and should be retained. The Commission now seeks additional comment on possible modifications to the Funeral Rule.

III. Advance Notice of Proposed Rulemaking

The Commission publishes this advance notice of proposed rulemaking (ANPR) pursuant to FTC Rule § 1.10, 16 CFR 1.10. The notice identifies areas of inquiry under consideration, the objectives the Commission seeks to achieve, and possible regulatory alternatives.

After carefully reviewing all of the submitted comments,²¹ the Commission is seeking additional input regarding the following seven topic areas: (1) whether and how funeral providers should be required to display or distribute their price information online or through electronic media; (2) whether funeral providers should be required to disclose third party crematory or other fees on the GPL; (3) whether the Rule's requirements regarding reduced basic services fees should be amended; (4) whether the Rule should be amended to account for new forms of disposition; (5) whether the Rule's embalming disclosure requirements should be amended; (6) whether the Rule should be changed to improve the readability of the price lists; and (7) whether changes should be made to the Rule to avoid negatively impacting underserved communities.

¹³ CFA RR at 2; AARP RR at 1; CA RR at 1; UUFV RR at 1; Service Corporation International ("SCI") RR at 14.

¹⁴ CFA RR at 2.

¹⁵ NFDA RR at 16. Almost all of the Rule's supporters asked for the Rule to be updated, modernized, amended, or changed. However, some industry advocates asked the Commission to keep the Rule as is. See Cremation Association of North America ("CANA") RR at 2; ICCFA RR at 5–8; Carriage RR at 1; SCI RR at 1; Florida Cemetery, Cremation, and Funeral Association RR at 1–2 (advocating that further regulation should be left to the states).

¹⁶ The Commission appreciates the commenters' submissions. All of the Rule Review comments are noticed and are part of the record.

A. Online and Electronic Price Disclosure

The Review elicited a large number of comments about whether to require funeral providers to post their itemized price lists online or to distribute price information electronically.²² Because the Rule was enacted 40 years ago, before websites, email, or social media were widely used, it only requires funeral providers to give price lists to in-person visitors. Funeral providers are not required to display or distribute their price information via any of these media.²³

As discussed in more detail herein, since the Rule was enacted, consumers have changed how they shop and obtain price information, and some funeral providers have started selling or advertising their services and goods online.²⁴ In addition, the pandemic highlighted that some consumers are unable to visit funeral providers to obtain the price lists required by the Rule, including the immunocompromised, older adults, disabled individuals, individuals located in different states, the grieving, and individuals without access to a vehicle.²⁵ Yet, commenters almost universally report that many funeral providers are not making their price lists available electronically or on their websites, even when requested by consumers.²⁶ The FTC is therefore seeking further comment about whether the method by which price lists are distributed should be updated and the benefits and costs to consumers and

²² 527 comments filed by individuals (many of whom appear to be members of funeral consumer advocacy organizations) urged the Commission to require that at least some price information be made available online.

²³ At least two states, California and Oregon, have some requirements for funeral providers that maintain websites. Cal. Bus. & Prof. Code § 7685(b)(1) ("Each licensed funeral establishment that maintains an internet website shall post on its internet website the list of funeral goods and services that are required to be included in the establishment's general price list, pursuant to federal rule, and a statement that the general price list is available upon request."); Or. Admin. R. 830-040-0050(6) (if a funeral establishment lists a price on its website, it must link to its General Price List).

²⁴ See *infra* notes 47–49.

²⁵ See *infra* notes 38–46. Under the Rule, funeral providers are required to tell persons "who ask by telephone about the funeral provider's offerings or prices . . . any accurate information" from the GPL, CPL, or OBCPL, "and any other readily available information that reasonably answers the question." 16 CFR 453.2(b)(1). The Rule does not require funeral providers to give out the GPL, CPL, or OBCPL to consumers who call them. And some commenters commented that receiving price information over the telephone is not equivalent to or as helpful as receiving a written GPL. See *infra* note 33.

²⁶ See *infra* notes 34–37.

¹³ All Rule Review comments are on the public record and are available for inspection at: <https://www.regulations.gov/docket/FTC-2020-0014>. The commenters included consumers, consumer advocates, individual businesses, industry groups, government agencies, and other organizations. The comments are cited as: [Commenter] RR [page number]. Individual commenters are identified by their first initial and last name. Companies and organizations are identified by abbreviated names.

¹⁴ See, e.g., New York State Funeral Directors Association ("NYSFDA") RR at 2; International Cemetery, Cremation and Funeral Association ("ICCFA") RR at 4; Select Independent Funeral Homes ("SIFH") RR at 5; Funeral Consumer Alliance of the Virginia Blue Ridge ("FCA VABR") RR at 1; Funeral Consumer Alliance of Western Massachusetts ("FCA WMA") at 1; Funeral Consumer Alliance of Pennsylvania ("FCA PA") at 1; Consumer Action ("CA") RR at 1; Funeral Consumer Alliance of Connecticut ("FCA CT") RR at 1; Funeral Consumers Alliance of Arizona ("FCA AZ") RR at 1; Carriage Service ("Carriage") RR at 1; The Consumer Federation of America ("CFA") RR at 1 Consumer Checkbook ("CC") RR at 1; Unitarian Universalist Fellowship of Visalia ("UUFV") RR at 1; National Funeral Directors Association ("NFDA") RR at 79. 157 consumers also explicitly expressed support for keeping the Rule. Two individual commenters said they did not see a continuing need for the rule, and one additional individual generally opposed the Rule. B. Small RR at 1 (many provisions in the Funeral Rule are appropriate, but this should be regulated by the states); B. Barcheers RR at 1 (Funeral Rule is no longer needed as "the public is more aware now"); M. Matos RR at 1 (Funeral Rule is "antiquated" and there is no need to single out the funeral industry).

¹⁵ CA RR at 1; see also Funeral Consumers Alliance ("FCA") RR at 3; CFA RR at 2–4; N. Leyden-Morffi RR at 1.

¹⁶ SIFH RR at 5; ICCFA RR at 5.

¹⁷ NYSFDA RR at 2.

businesses if the Rule is updated in such a manner.

1. Summary of Comments

A. Comments Generally Supporting Online and Electronic Disclosure

Many commenters urged the Commission to update the Rule to require funeral homes to post their GPLs online, or at a minimum require providers to send the itemized price information electronically to persons who request it.²⁷ They argued that the incredible stress caused by a loss of a loved one,²⁸ consumers' limited

²⁷ See, e.g., Attorneys General of the District of Columbia, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin ("AG") RR at 2; AARP RR at 2; House Energy and Commerce Committee ("House Committee") RR at 2; Cleveland Memorial Society—M. Binning ("CMS") RR at 1; Memorial Society of Georgia—T. Beale ("MSGA") RR at 1; Funeral Consumer Alliance of Utah—J. Mitchell ("FCA UT") RR at 1; Truth in Advertising, Inc. ("TINA") RR at 2–3; Last Rights of Central Pennsylvania—L. Mulvey ("LRCPA") RR at 1; Funeral Consumers Alliance of California, Advisory Committee for Cemetery & Funeral Bureau, Dept of Consumer Affairs, CA—J. Okuye RR at 1; Funeral Consumer Alliance of North Carolina—H. Williams ("FCA NC") RR at 1; Funeral Consumers Alliance of Greater Kansas City ("FCA GKC") RR at 1; FCA of Eastern Massachusetts ("FCA EMA") RR at 1; Funeral Consumers Alliance of Greater Rochester ("FCA GR") RR at 1; Peoples Memorial Association ("PMA") at 1; FCA PA RR at 1; Funeral Consumers Alliance of South Carolina—O. Ganong ("FCA SC") RR at 1; Funeral Consumers Alliance of Maine—Anthony Antolini ("FCA ME") RR at 1; CA RR at 1; CFA RR at 6–10; Funeral Consumers Alliance of Central Texas—N. Walker ("FCA CTX") RR at 1; Funeral Consumers Alliance of the Finger Lakes—W. Sinclair RR at 1; Funeral Consumers Alliance of Princeton—N. McCarty ("FCAP") at 1; FCA CT RR at 1; Chicago Consumer Coalition ("CCC")—D. McCurry RR at 1; FCA RR at 3–9; CC RR at 1; Consumer Reports ("CR RR") at 2–3; FCA AZ RR at 1–2; Funeral Consumers Alliance of Minnesota ("FCA MN") RR at 1; Texas Applesed RR at 1; Balance for Life and Death—Neidra RR at 1; Imperial Caskets—D. Perkins ("Imperial Caskets") RR at 1; Funerea Ltd. Company—M. Hamilton ("Funerea") RR at 1; Out of the Box Funeral Planning—Susan Mackey ("OBFP") RR at 1; Peace of Mind—C. Andrews RR at 1; Charter Funerals—S. Minich ("Charter Funerals") RR at 1; Cindys List Funeral Concierge & Inheritance Protection—C. Ivey RR at 1; Homesteaders Life Co.—M. Lacey ("HLC") RR at 1; On the Record Advance Planning—A. Praskac ("OTR") RR at 1; Givens Estates, Inc. and FCA NC—E. Hillman ("Givens Estate") RR at 1; UUFV RR at 1; Borderland, a Community Ministry in Knoxville, TN—J. Arthur ("Borderland") RR at 1; Burmese American Buddhist Corp.—I. Timm RR at 1; Diversity Collaborative—L. Lusardo ("DC") RR at 1; Morristown Beard School—J. Farhat ("MBS") RR at 1; Kansas City Hospice & Palliative Care—R. Valdovino RR at 1; S. Della Valle RR at 1 (funeral home owner). As one commenter said, "[t]his is simply updating the Rule for the current age." Borderland RR at 1.

²⁸ FCA RR at 2, citing <https://www.stress.org/holmes-rahe-stress-inventory> ("The Holmes and Rahe Stress Scale, an index of stressful life events, rates the death of a spouse as the most stressful event a person will experience."); see also TINA RR at 1 n. 2.

experience with planning funerals,²⁹ and the need to quickly make decisions about what to do with a dead body³⁰ — "combine to put the funeral consumer in a uniquely disadvantaged position."³¹

Some commenters noted at least some funeral providers are willing to provide itemized price lists to consumers only when required by the Rule (which currently only requires itemized price lists to be provided during in-person meetings).³² Numerous commenters reported funeral providers refused to provide their itemized price lists in response to requests by mail, email, fax, over the phone, or by using the contact form on the provider's website.³³

²⁹ CR RR at 1; FCA RR at 3.

³⁰ For example, the Funeral Consumer Alliance of Utah noted that "[i]n hospitals, when death occurs, families are ordered to call a funeral home to come immediately. Social Workers in hospitals I've spoken to typically don't assist grieving families in price comparing. Families tell us that the Social Workers just google 'closest funeral home to [name of city]'. FCA UT RR at 1; see also TINA RR at 1 n. 3 (noting that a "2007 AARP survey found that only 34 percent of those 50 years or older have 'engaged in some [funeral] preplanning.' Lona Choi-Allum, 'Funeral and Burial Planners Survey,' AARP (November 2007). Surveys by the [NFDA] found the percentage of adults of all ages who have preplanned funerals is even lower. See, e.g., 'Consumer Awareness and Preferences Study,' National Funeral Directors Association (Apr. 2019), at 8.").

³¹ FCA RR at 3; see also TINA RR at 1; CC RR at 1 ("Although the funeral homes that receive ratings on our surveys are overall rated fairly highly compared to many other services we evaluate, we receive an inordinate number of complaints about high costs. A common complaint from families we survey is that they paid a lot more than they expected for their loved ones' funerals; sometimes, they report funeral directors coaxed them into spending more than they would have liked."); J. Wilson RR at 1 (discussing how she was present while a funeral provider played on the emotions of her grieving friend to get a larger sale by saying things like "your husband deserved better than that").

³² AARP RR at 2; see also MSGA RR at 1 ("[M]y experience over the past few years is that 50–75% of Funeral Homes will NOT candidly and promptly follow through on a simple request for pricing information."). Indeed, FTC enforcement experience and has shown that some do not even comply with the current Rule's requirement to timely distribute price lists. See *FTC Releases Funeral Home Compliance Results, Offers New Business Guidance on Funeral Rule Requirements*, FTC Press Release (June 8, 2020) (FTC investigators found failures to disclose timely itemized pricing information, as required by the Funeral Rule, in 17 of the 90 funeral homes visited since 2018). In addition, the FCA and the CFA found that 28 out of 126 GPLs they examined violated the Rule because they lacked legally required consumer options or offered only packaged options. CFA RR at 8 (citing Joshua Slocum, Stephen Brobeck, *The Relationship between Funeral Price Disclosure and Funeral Prices: A California Case Study*, report from Consumer Federation of America/Funeral Consumers Alliance (February 2021)).

³³ FCA VABR RR at 2 (20% of the homes surveyed refused to provide price information in response to a letter); FCA UT RR at 1 ("Many funeral homes that we've requested a GPL from over

Commenters also reported many funeral providers do not make their price lists available online, even if they have a website or other online presence.³⁴ A 2018 survey by the

the phone and by email fail to send one"); CC RR at 3 ("Often, our researchers had to call several times to request [the GPL]. With many (we estimate it was about one-third of homes that didn't list GPLs online), our shoppers had to persuade funeral directors to email or fax GPLs by claiming to live out of town and therefore couldn't visit in person over the next few days. Some funeral homes—about 10 percent—refused to provide GPLs to our undercover shoppers. They required us to visit in person to learn about their prices."); FCA CT RR at 1 (In 2019, they were only able to get a 57% response from funeral homes, after sending two letters, and working with local volunteers and members who phoned, wrote or visited those still not responding); MSGA at 1 ("Time after time I have also tried to help people who contacted a local Funeral Director to request pricing in writing and was told that it would be sent to them, but it never showed up."); M. Klein RR at 3–4 ("Numerous funeral homes have point-blank refused to give me prices over the phone. Others did not to return phone calls within a few days, and required multiple requests. And others never responded at all. The phone requirement is hard to 'police' since it is personal communication, whereas violations of an internet requirement would be readily apparent and the rule enforceable."); R. Alexander RR at 1 (stating that he requested pricing information using the contact form on 10 funeral homes' websites, 4 sent the requested information, 2 never responded, and the other 4 would not send the GPL but wanted to talk by phone); R. Zeldin RR at 3 (recalling that when she assisted an Arizona resident planning an out of state funeral 29% required three or more email and phone calls before sending pricing information, and 20% homes never responded; when she assisted a Pennsylvania resident, 67% ignored or refused her request for information); E. Menkin RR at 1 (when mother died, commenter had to drive to funeral homes when funeral providers refused to email or mail her a price list). Some commenters also point out that the current requirement to provide price information over the telephone when asked by callers is not the same as getting a written GPL. MSGA RR at 1 (when information is provided over the phone, there is "no record of the conversation or proof that prices were given"); see also C. Reid RR at 2 (stating that "[a] document with the funeral homes' letterhead and their itemized lists is far more valuable than what I heard over the phone from 'Mary Sue' who was filling in the day when I called in regarding the price lists.").

³⁴ FCA WMA RR at 1 ("Almost all of the 85 funeral homes in our area (4 counties of western Massachusetts) do have websites, but very few reveal prices online. In 2016 only 1 funeral home had its GPL online. In 2018, we found 4 with prices online."); FCA RR at 7–8 (a February 2020 survey of California funeral homes found that those that charged the highest prices were most likely to opt out of putting their pricing online); Texas Applesed RR at 2 ("in a recent search of funeral homes in Austin, Texas, only one of the 15 homes surveyed posts their price list online"); FCA AZ RR at 1 (many funeral providers in Arizona do not post pricing information online); D. Stimpert RR at 1 ("Of the 300 or so funeral homes in Northeast Ohio, I have found only 12 that post a full General Price List (GPL) on their website."); UUFV RR at 1 ("[T]he Dignity Memorials website for our local Visalia-based funeral home website requires a consumer to divulge one's personal email address to them in order to download a PDF document identified as a 'price guide.' Upon receipt, it turns out that this document is just an advertising brochure, not an actual price list. The only costs

Consumer Federation of America (“CFA”) and the Funeral Consumers Alliance (“FCA”) found only 16 percent of the funeral homes they surveyed posted their GPLs on their websites.³⁵ Consumer Checkbook similarly reported “fewer than 25 percent—had posted their GPLs online.”³⁶ Further, according to one commenter, even when pricing information is available on a website, the prices may be out of date.³⁷

Commenters discussed how difficult it can be for many funeral purchasers to personally visit funeral homes to pick up price lists,³⁸ including emotionally distraught families,³⁹ families who live

identified in the document are framed in the phrase ‘National median cost’ rather than providing the specific price of the local funeral home’ and a large funeral home in area has an expensive website, but it does not disclose prices on that website); M. Bern-Klug RR at 2 (University of Iowa study found that, in 2016 study of three markets in Iowa, “7 of the 48 funeral homes did include their GPLs on their website. We checked again the first week of June 2020 and determined an improvement: 13 funeral homes had posted their GPL (eight of the 28 funeral homes in Des Moines and five of the 23 funeral homes in the Cedar Rapids/Iowa City area)”; H. Lee RR at 3, citing Robert Benincasa, *You Could Pay Thousands Less For A Funeral Just By Crossing The Street* (Feb. 7, 2017), NPR, <https://www.npr.org/2017/02/07/504020003/a-funeral-may-cost-you-thousands-less-just-by-crossing-the-street> (last visited Apr. 16, 2020) (most funeral homes omit to post prices on websites); C. Reid RR at 3 (“In my area all the funeral homes have a website. Some share quite a bit of information except for prices. You are told to call in and stop by to pick up the price lists you want. . . . A sample [of funeral providers] showed that the city of Los Angeles, (73%), to the lowest Alameda County (27%) posted prices conspicuously. California-Funeral-Home-Pricing-Report-9–30–19docx Funeral Consumers Alliance, Inc.”); A Rector RR at 1 (only 25% of funeral homes in Maine list the GPL on their websites); J. Bates RR at 1 (of the 200 funeral retailers in the Dallas-Ft. Worth area, less than 10 post any pricing online); but see FCA UT RR at 1 (“Quite a few Utah funeral homes are now posting their prices online on their own, so it should not be a problem for the sneaky ones to do so as well.”). Additionally, on June 21, 2022, the Funeral Consumers Alliance (FCA) and Consumer Federation of America (CFA) issued a report that outlining their May 2022 survey of 1,046 funeral provider websites. The survey found that only 191 of these homes (18%) posted their price lists online. Joshua Slocum, Stephen Brobeck, *Online Price Posting At More Than 1,000 Funeral Homes in 35 State Capitals* (June 2022).

³⁵ CFA at 3–4 (citing Joshua Slocum, Stephen Brobeck, *A Needle in a Haystack—Finding Funeral Prices Online in 26 State Capitals*, report from Funeral Consumers Alliance/Consumer Federation of America (January 2018) (also noting that in twelve cities, no funeral providers posted their prices online).

³⁶ CC RR at 3.

³⁷ FCA WMA RR at 1.

³⁸ CFA RR at 3, citing James W. Gentry *et al.*, “The vulnerability of those grieving the death of a loved one: Implications for public policy,” *Journal of Public Policy and Marketing*, v. 14, n. 1 (Spring 1999); see also, e.g., *Texas Appleseed RR at 1*.

³⁹ AARP RR at 2; S. Henderson RR at 1 (after the sudden death of his 15 year old stepson, it was too hard for his family to visit multiple funeral providers to price shop); A. Nickerson RR at 1 (recounting her experiences in planning for the

in different states,⁴⁰ the disabled, ill, and homebound elderly consumers,⁴¹ those lacking access to transportation,⁴² and rural consumers, who often have to drive long distances to reach the nearest funeral home.⁴³ One commenter reported that “[w]hen my wife was taken to the hospital, the doctors told

burial of a family member, a “time of distress and grief”, and explaining that the process would have been easier if prices were available online); R. Robertson RR at 1 (describing how out of state relatives had to step in to help grief stricken niece plan a funeral); S. Alleger RR at 1 (discussing the impact on family members when they had to be physically present to discuss funeral arrangements “while emotionally raw,” and explaining that they agreed to charges they did not want just to get out of the situation). See also FCA CTX RR at 1 (“[E]ven when a death is expected, spouses and children are overwhelmed with shock and grief. They have a lengthy list of tasks and decisions to make without delay. Seldom do they have the time, energy, or mental clarity to call or visit more than one funeral home. If, however, price lists were available online, information about goods and services could be collected by a family member, neighbor or friend who is not emotionally distraught.”).

⁴⁰ FCA CTX RR at 1; CCC RR at 1 (“Those facing death and their out-of-town relatives planning funerals simply cannot visit several funeral homes to pick up price lists. And if they did, the likelihood of their visiting the homes offering the best value is unlikely.”); FCA AZ RR at 2 (quoting consumer having difficulty making out of state funeral arrangements, “I live in Florida and a Medical Examiner in Arizona just called to tell me that my nephew there died. I can’t find out from the funeral homes online how much it will cost to ship his body here or have him cremated and shipped. Do you have any pricing information or how do I get it?”) (emphasis in original); B. Girling RR at 1 (“had to make funeral arrangements for family located out of state, many funeral homes would not give prices over the phone”); L. Lew RR at 1 (recounting how, in her experience as a Veterans Hospital employee, it is so stressful for out of state families to obtain funeral price information, and noting that posting prices online would do much to “eas[e] the emotional and financial stress involved in making needed funeral arrangements”); J. Wilson RR at 1 (describing difficulties in arranging for out-of-state funeral for his mother, and explaining that an online price list would have made things much easier); see also CFA RR at 3, citing Hwangjung Choi, et al., *Spatial Distance Between Parents and Adult Children in the United States* (September 2018 report funded, in part, by the National Institute on Aging) (“According to data from the 2013 Panel Study of Income Dynamics, one-quarter (25%) of parents do not have an adult child living within 30 miles of them.”).

⁴¹ See, e.g., K. Dvorak RR at 1 (wheelchair bound consumer noted that online posting of prices would make it easier to find prices); M. Klein RR at 1 (stating that when he had a medical condition and could not drive and walk, he had to rely solely on the handful of GPLs posted on the internet); V. Thorp RR at 1 (as an elderly home-bound individual with an elderly home-bound spouse, she feels a “special burden when contemplating the need to put my affairs in order”); J. Singler RR at 1 (an eighty-year old consumer with hearing issues reported that “[d]riving some places or making several phone calls does not work for us”).

⁴² M. Scrudder RR at 1; N. Leyden-Morffii RR at 6.

⁴³ A. Rector RR at 1 (noting that it is not uncommon for Maine residents to drive 40 miles or more to reach a funeral home, but only 25% of the funeral homes in Maine post their GPL on their website).

me she had only days to live. Turned out to be four. I shouldn’t have had to choose between spending her last days with her or collecting funeral information.”⁴⁴ Another reported that when his 4-year-old son died suddenly, he had to make arrangements quickly and transfer his son’s body to a funeral home right away without knowing its prices. He said he “had a crushing level of grief when I walked into that funeral home and I had absolutely no way to negotiate when they handed me their proposed price. How is that fair? They already had possession of my son’s body, so it was not like I could walk out and begin shopping.”⁴⁵ The pandemic has heightened such difficulties, as many people have been reluctant or unable to leave their homes to obtain itemized price lists from funeral providers.⁴⁶

Many commenters urged the Commission to modernize the Rule to require funeral providers to post their itemized price information online because it would greatly benefit consumers shopping for funeral services.⁴⁷ Some argued online shopping is widely available now,⁴⁸ and many consumers want funeral prices to be posted online.⁴⁹ Others noted that online posting will make it easier for consumers to obtain price information and provide better opportunities for

⁴⁴ J. Brown RR at 1.

⁴⁵ A. Drapczuk III RR at 1. Another commenter reported when his stepson died in a car accident, they only visited one funeral provider because “the thought of having to visit more than one Funeral Home was unbearable.” S. Henderson RR at 1.

⁴⁶ FCA NC RR at 1; FCA EMA RR at 1; PMA RR at 1; CCC RR at 1; House Committee RR at 2; TINA RR at 2 n. 12.

⁴⁷ CFA RR at 7–8; OBFP RR at 1; Imperial Caskets RR at 1; Funerea RR at 1; LRPCA RR at 1; CA RR at 2; FCA SC RR at 1; Texas Appleseed RR at 1; FCA RR at 5–9; FCA CT RR at 1; TINA RR at 2. One commenter argued that the current language of the Rule “implicitly encourage funeral homes to exclusively use printed format, in an age where almost everything (e.g., bills, receipts, invoices, bank statements, etc.) has become paperless.” H. Lee RR at 3.

⁴⁸ CFA RR at 6, citing Nielsen Global Connected Commerce Survey, (“a large majority of consumers now use the internet as part of their online search for products, and a significant number of these online searchers compare online price”) and Janssen, Morage-Gonzalez, Wildenbeest, “Consumer Search and Pricing Behavior in internet Markets” (online 2009) (consumers especially compare online prices when products are relatively expensive); OTR RR at 1 (“according to 10 Online Shopping Statistics You Need to Know in 2020 (article by Maryam Mohsin on Oberlo dated 30 Oct 2019), 63% of shopping occasions begin online.”).

⁴⁹ CFA RR at 10 (a 2017 CFA-commissioned landline and cable phone survey undertaken by Opinion Research Corporation of 1,004 representative adult Americans found that 79% of respondents agreed that “[i]f the funeral home has a website, should it also be required to make this price information available on its website?” and only 18% disagreed).

consumers to meaningfully price shop and view the Rule's mandatory disclosures earlier in the process.⁵⁰ And some stated that online posting could lead to more price competition among funeral providers.⁵¹

Commenters offered various ideas for how an online price requirement should be implemented. Almost all agreed that funeral providers that maintain websites should be required to prominently and conspicuously post their price lists on their websites.⁵² Supporters of this view noted that the cost to these funeral providers would be minimal.⁵³

⁵⁰ TINA RR at 2; CFA RR at 2–7; AG RR at 2; see also CA RR at 2 (a February 2020 CFA-commissioned Engine Group online survey of 1,000 representative adult Americans showed that 91% would be likely to make price comparisons online if funeral homes posted their price lists on their website, and 61% would be “very likely” to do so).

⁵¹ FCA EMA RR at 1. See also CC RR at 1; TINA RR at 2; Prof. J. Perloff RR at 1. Commenters argued that amending the Rule to include an online price requirement will “[i]ncrease competition and encourage funeral homes to offer the best possible pricing, particularly [] in local markets where there are large price differences between many funeral homes.” AARP RR at 2; see also S. Della Valle RR at 1 (funeral owner requesting online posting of GPL, CPL, and OBCPL; he states that his competitor will not hand out GPL on request, instead the competitor uses his GPL and then sets his prices accordingly); CA RR at 1; CCC RR at 1; RW Alexander RR at 3 (noting that in his area of Northern Utah, there is a 223% difference in prices for a full funeral); FCA RR at 8–9 (noting that the prices for funeral services vary widely and the price variation is not due to differences in quality “because prices vary even for cremations and direct burials, which involve generally the same service.” Instead, “the problem is that Providers know that most families are not aware of this huge price variation. . . . So, even a very high price is categorized in the consumer’s mind as ‘normal, and just what funerals or cremations cost’”); CC RR at 4 (“We also find that [funeral home] prices are not related to service quality. Funeral homes that receive high marks from their surveyed customers for service quality are actually slightly *less likely* to charge high prices compared to funeral homes that receive low scores from their surveyed customers.”) (emphasis in original).

Commenters also cited to a recent study that found that funeral providers in California who voluntarily disclose their prices on their websites charged consumers lower rates. FCA RR at 7–8 citing Joshua Slocum and Stephen Brobeck, *The Relationship between Funeral Price Disclosures and Funeral Prices: A California Case Study—February 2020*. Accessed at: <https://funerals.org/wpcontent/uploads/2020/02/California-Funeral-Home-Pricing-Report-2-10-20.docx> (noting that “[p]rice-hiders charged a median price 31 percent higher for a direct cremation (\$1,695) than those who prominently disclosed their prices online (\$1,295). Price-hiders charged a median price 37 percent higher for an immediate burial (\$2,595) than prominent disclosers (\$1,900), and Price-hiders charged a median price 36 percent higher for the basic services of funeral director and staff (\$1,835) than prominent disclosers (\$1,348)”).

⁵² See, e.g., UUFV RR at 1; FCA RR at 9; AG RR at 2–3; CA RR at 1; CR RR at 2. One commenter stated that funeral providers should only have to post a GPL online, and not the OBCPL and CPL. D. Stahlhut RR at 1.

⁵³ FCA RR at 5; AG RR at 2–3; CA RR at 1; CR RR at 2; CFA RR at 10; FCA AZ RR at 2–3; MSGA

Similarly, one commenter urged the Commission to mandate that if a funeral provider has a business or “official” account on social media services, “they should be required to post their [p]rice list information on that social media service.”⁵⁴

Commenters disagreed, however, about whether funeral providers that do not maintain a website should be required to post their prices online. One commenter argued all providers should make pricing information available electronically, because setting up a website can be done with little cost.⁵⁵ Some commenters asserted funeral providers without a website should have to promptly email itemized price lists in response to consumer requests.⁵⁶ Others argued that email delivery was not an acceptable substitute, because email would often be too slow for the time sensitive decisions at issue,⁵⁷ and requiring funeral homes to respond to emails in a timely fashion could be too

RR at 1; UUFV RR at 1; see also C. Tregillus RR at 2 (“With computers and printers/copiers now essential to all businesses, the costs of preparing, revising, and printing the required disclosures are negligible, even for small, low-volume funeral home businesses. Although some funeral providers, of course, may elect to spend more than the Rule requires on their price lists by, for example, sending them out for professional multi-color printing, the prices they choose to pay for such services are not required by the Rule, and thus are not real compliance costs. Any claims about the high cost of compliance would likely reflect such costs that are not required by the Rule.”). Indeed, some argued that online pricing may save funeral providers money, as they will save on printing and staff costs, and electronic files can be changed quicker and easier than print files. FCA RR at 5; FCA VABR RR at 2.

⁵⁴ UUFV RR at 2.

⁵⁵ AARP RR at 2. But see K. Kaczmarek RR at 3, citing *How Much Should a Website Cost?*, WebFX (2020) (setting up a website can cost thousands of dollars). One commenter asked that funeral providers in parts of the country with no or limited internet should be exempted from any online disclosure requirements. FCA VABR RR at 3–4.

⁵⁶ CR RR at 2; see also MSGA RR at 1 (sending pricing info via email should be “a very simple thing”); R. Zeldin RR at 1 (information must be emailed within 24 hours of receiving the request); M. Ludlum RR at 3 (noting that websites should not be mandatory now, but that he anticipates that all funeral providers will have a website in the next few years because “of the many benefits of having a funeral home website”). One commenter also suggested that the Rule be updated to require “providers responding to telephone requests for price lists [to] give consumers the option of receiving emailed electronic copies, and otherwise provide the GPL’s required affirmative disclosures orally.” C. Tregillus RR at 3.

⁵⁷ C. Tregillus RR at 7 (requiring consumers to request emailed prices will “cause at least some delay” which may “prevent consideration of the information” particularly where “consumers may feel under pressure to make rapid arrangements”); see also FCA AZ RR at 3; M. Klein RR at 4. One commenter argued that funeral providers should be given 48 hours to respond to any emailed request for price lists, given that the email could be sent over a weekend or late at night. D. Stahlhut RR at 1.

burdensome given that at least some homes have only a handful of employees.⁵⁸ Some commenters noted the collection of email addresses by a funeral provider could raise privacy and spam concerns.⁵⁹ Among those commenters who supported online disclosures, some also asked that the Rule be amended to contain guidelines for how online disclosure should be made,⁶⁰ such as requiring “online GPLs be updated in a reasonable timeframe when prices change”—so consumers are not misled by out of date prices.⁶¹

Regardless of how the Commission might implement an online or electronic distribution requirement, commenters urged the Commission to amend the Rule to require that, no matter how a purchase is ultimately made (in person or via phone call, email, or texting, etc.), a funeral provider must provide a copy of the GPL, CPL, and OBCPL before a consumer makes any selections.⁶²

B. Comments Generally Opposing Online and Electronic Disclosure

Some commenters argued the Rule should not be amended to require all funeral providers to post their itemized GPLs, CPLs, or OBCPLs online.⁶³ Citing

⁵⁸ RW Alexander RR at 7 (website disclosures would be less burdensome to small businesses that requiring them to respond to email).

⁵⁹ UUFV RR at 1 (some of its members have reported receiving “spam” email and phone calls from funeral providers); R. Doremus RR at 1 (consumer was contacted by a funeral home for six months after providing her information); CFA RR at 3 (some funeral providers use provided contact information to “aggressively market their services, including repeated calls”).

⁶⁰ For example, some suggested that the FTC consider requirements for language, type size, and placement in any required online disclosures, as well as requirements that the posting be conspicuous and easy to see, and that the GPL or a link to the GPL be visible on the landing page of the funeral home’s website. CFA RR at 10; FCA MN RR at 1; M. Ludlum RR at 4–5; RW Alex RR at 16.

⁶¹ FCA WMA RR at 1. One commenter advocated instead that funeral providers only be allowed update their prices once a year, on 60–90 days’ notice to consumers. N. Finkle RR at 1.

⁶² FCA AZ RR at 3. Several attorney generals argued that if the arrangements are made without an in-person meeting, then the “funeral provider should be required to provide electronic copies of its itemized GPL, CPL, or OBCPL prior to the consumer making any selections” and “post all prices on their websites.” AG RR at 3. Another commenter stated that “digital delivery of [GPL, CPL, and/or OBCPL] should constitute ‘physical delivery,’” but the burden will be on the provider to prove, “through technological means such as digital footprint tracking and other such methods, that a consumer has reviewed and received the” price list. HLC RR at 1.

⁶³ SCI RR at 3, 16; Funeralocity RR at 1–2; NYSFDA at 3; CANA RR at 2; SIFH RR at 11–12; ICCFA RR at 9–26; NFDA RR at 44–52; Carriage RR at 2. See also the almost identical comments submitted by the Kentucky, South Dakota, Utah, Iowa, Michigan, and Rhode Island Funeral Directors Associations, the New Hampshire Funeral Director and Embalmer Association, the Hawaii Funeral &

industry surveys, they argued consumers are not currently being harmed by not having funeral prices online, so a Rule amendment would not be appropriate.⁶⁴ They argued the current Rule “provides consumers with complete and accurate pricing information that they can digest and utilize to develop funeral arrangements that meet their unique needs and circumstances”⁶⁵ and “[i]f a consumer does not want to step inside a funeral home . . . , they do not have to do so and are free to shop over the telephone or by visiting a funeral home and taking its price list with them when they leave.”⁶⁶ Some of these commenters stated many funeral providers already post price information online (although no commenters provided data about what price information is available or how widespread the practice is),⁶⁷ and,

Cemetery Association, and the Arizona Funeral Cemetery & Cremation Association (the “State FDAs.”) The Indiana Funeral Directors Association reports that 80.5% of 144 licensed funeral providers in Indiana feel website/virtual inclusion should not be mandated in the Rule. Indiana Funeral Directors Association (“IFDA”) RR at 3.

⁶⁴ NFDA RR at 44–45 (NFDA’s Consumer Survey found that “slightly over 90% of consumers do not even look for price information when selecting a funeral home. Secondly, of those who do seek out price information, 65.4% do it by visiting the funeral home and 24.8% by telephoning the funeral home”); see id. at 48 (“Given the fact that less than 10% of funeral consumers seek price information before selecting a funeral home and that an overwhelming majority of those 10% prefer to visit the funeral home (65.4%) or telephone the funeral home (24.6%), there is scant reason to believe that requiring all funeral homes to post price lists would benefit any consumers. However, to require the nation’s 20,000 funeral homes to post all their price lists on their websites and to add updates thereto would involve substantial initial and ongoing costs.”); Funeralocity at 1 (“We do not see a transparency problem in funeral provider prices. As the NFDA 2019 consumer survey shows, in 83.2% of the time, families call only one funeral home in their times of need. And they can get the prices in that call—even in a grief-stricken state. We see no reason to change the Funeral Rule regarding GPL disclosure. There is no problem to remedy”); ICCFA RR at 10 (noting that only one commenter said pricing information was unavailable).

⁶⁵ SCI RR at 16. See also NFDA RR 48 (“Even for the less than 1% of funeral consumers who do use the internet to price shop, there is no evidence that they have any problem accessing funeral price information on the internet. As NFDA’s Funeral Consumer Survey evidence showed, of the small minority of consumers who do price comparison shop, over 87% of them reported it was very easy, easy, or somewhat easy to obtain the price information they wanted.”)

⁶⁶ Carriage RR at 3. But see discussion *infra* footnotes 29–30, 37–42 regarding reported difficulties with getting price lists or with visiting a funeral home.

⁶⁷ New Jersey Funeral Directors Association (“NJSFDA”) RR at 4 (“Many NJSFDA funeral providers voluntarily make GPLs available on their websites. Others utilize and subscribe to Funeral Matters. . . . Funeral Matters is a contemporary and transparent online pricing tool that allows consumers the ability to price and compare accurate charges with information available on the websites

they point to third-party online services that collate funeral price information and offer it to the public.”⁶⁸

Some commenters argued most consumers are satisfied with the current status quo⁶⁹ and the market should dictate whether funeral homes make prices available online.⁷⁰ Some of these commenters stated that, unlike many products, consumers consider more than price when purchasing funeral services,⁷¹ and visiting funeral homes is beneficial to consumers.⁷²

of 26 subscribing funeral providers. . . . In 2019, an average of 1,700 unique consumers performed pricing research on the subscribing funeral providers’ websites each month, representing 27.5% of the funerals performed every month in NJ (74,159 deaths/12 months = an average of 6,180 deaths each month.); NYS FDA RR at 3 (“While empirical data show that this medium still lags as a tool for consumers in seeking out funeral pricing information, it is a fact that a growing number of funeral homes continue to choose to voluntarily place their price lists on their websites”); ICCFA RR at 10, citing FuneralOne, <https://www.funeralone.com> (last visited June 9, 2020); Consolidated Funeral Services, <https://runcfs.com> (last visited June 9, 2020); and Frazer Consultants, <https://www.frazerconsultants.com> (last visited June 9, 2020).

⁶⁸ ICCFA at 11; see also NFDA RR at 50. One service, Funeralocity, commented stating that it “spend[s] many thousands of dollars obtaining and updating GPLs every year. If prices were available online, we would save a lot of money. But we would lose some of the uniqueness that we offer in displaying the prices of virtually every funeral provider in the US online. . . . We are updating prices constantly. . . . While our updating process cannot be done in real time with the GPL changes at each individual provider, we are very accurate. And when we are not, the price is only off slightly. The packages we create are for sampling the provider’s prices and the pricing profiles are still valid especially when comparing to a competitor funeral home’s pricing.” Funeralocity RR at 2. But one commenter noted, however, that this information, while well-intended, quickly becomes “outdated and inaccurate (at no fault of each funeral provider) and often results in consumer/funeral provider conflict.” NJSFDA RR at 3.

⁶⁹ NFDA RR at 46 (NFDA’s 2019 and 2020 funeral surveys showed that 19.54% of consumers found it to be very easy to obtain price information, 34.9% found it to be easy, 32.75% found it to be somewhat easy, 10.85% said it was not very easy, and 2.05% said it was not easy at all); SCI RR at 2, 8, 9 (summarizing results of a JD Power’s survey).

⁷⁰ NFDA RR at 49; CANA RR at 2; Carriage RR at 2–3; State Directors FDA RR at 1 (“Additionally, our member funeral homes know very well the clientele they serve. If families want price information posted on the funeral home’s website, the funeral home will post it.”); ICCFA RR at 10, 20–21 (“Having that choice allows the funeral home to present and inform the consumer in the manner that is fair to the consumer and most appropriate for the business. If the Funeral Rule were to mandate that all prices must be made available online through a funeral home website, it takes away the business’ right to choose where it conducts business.”).

⁷¹ NFDA RR at 10–11, 49. As one funeral provider said, “Price simply does not tell the story” of what a consumer is buying when it comes to funeral service arrangements—“the ‘look and feel’ of the facilities matter.” SCI RR at 13–14.

⁷² NYSFDA RR at 3 (“Indeed, there is also infinite value for a consumer to speak with a funeral

Some critics of an online disclosure requirement argued such a requirement would be burdensome to funeral providers, including small businesses who “lack[] the budget, expertise, and staff to create and maintain a website.”⁷³ although they did not quantify this burden or offer evidence to support their position. They further argued the proposed requirement is especially problematic for rural funeral homes, because many do not have a website due to lack of local technology infrastructure.⁷⁴ Some commenters argued mandating website price disclosures would put small business at a competitive disadvantage⁷⁵ and potentially cause them to be subject to unaffordable penalties for law violations.⁷⁶ They argued funeral homes are already subject to state regulation, and adding an additional layer of regulation (which, they argued, might conflict with state laws) “is not only unnecessary but will create confusion.”⁷⁷

Some commenters argued a requirement to post prices online would be unfair since no other industry is mandated by federal law to post prices online, except for a “new Department of Health and Human Services regulation which mandates that hospitals post prices for certain procedures online.”⁷⁸

director, preferably in person, so as to better understand his or her funeral home’s specific offerings and to review and explain price lists and the various options that are available. Consumers are best served when they can factor into their decisions both price AND service.”).

⁷³ SIFH RR at 11–12; see also ICCFA RR at 21 (“Many funeral homes are small facilities that have limited resources and limited access to technology. Having to modify a website; keep it current; and also make it consumer-friendly, are things small providers may not be able to do.”); Funeralocity RR at 2 (“In our opinion, funeral directors are not typically tech savvy, so these changes will have to be implemented by outside resources.”).

⁷⁴ IFDA RR at 3–4 (adding that some providers use social media or instant messaging rather than having a website).

⁷⁵ ICCFA RR at 21 (“Potentially, larger or more tech-savvy providers could dominate on the pricing presentation and consumers could be misled thinking that these were better providers—merely because now, potentially, all shopping would be done online.”).

⁷⁶ ICCFA RR at 24. The ICCFA was also concerned about costs to educate funeral homes concerning the rule changes, including the costs to mortuary schools which will have to update references, books and materials on the current Funeral Rule and to states which would have to update its testing materials. Id.

⁷⁷ Carriage RR at 3; see also SCI RR at 15–16. But see OTR RR at 1 (noting that Texas exercises minimal oversight over the funeral industry).

⁷⁸ NFDA RR at 47; State FDAs RR at 1. See also ICCFA RR at 20 (“[o]ther industries regulated on the Federal level have disclosure requirements, which each provide a trigger point, but none are promulgated solely upon the existence of a website. . . . For example, U.S. air carriers must

Continued

One commenter argued that “[g]iven the rapid pace of technologic change, in another decade the online world will likely look just as different. . . . Many funeral homes are engaging with the public on social media platforms, such as Facebook, Twitter, and Instagram. These website alternatives do not lend themselves well to posting a GPL.”⁷⁹ Another commenter argued requiring only funeral providers that maintain a website to post a GPL online, “could lead to some funeral homes removing their websites in order to avoid the requirement.”⁸⁰

Some commenters who argued against requiring all funeral providers to provide electronic or online delivery of itemized price lists, did support more limited modifications to the Rule. First, several commenters opined all funeral providers that offer consumers the option to make funeral arrangements online must post an itemized price list online, so consumers can review this price information before making a purchase.⁸¹ As one commenter said, “[c]onsumers who choose to shop online deserve the same protections as those who arrange a funeral or cremation in person—and certainly deserve to receive itemized pricing information ‘prior to any selection or determination’ of funeral goods and services.”⁸² Second, the National Funeral Directors Association (“NFDA”) proposed the Rule be updated to include “permissible options” to transmit GPLs to consumer via new “information distribution systems” that have emerged since the Rule was enacted—“including personal delivery, U.S. Mail, electronic mail, telefax, or by posting a link to its GPL on the funeral home web page with the word[s] ‘price information.’”⁸³ Third, one commenter

disclose various fee information, including baggage fees, to consumers. However, the disclosure is only required upon the ‘website of U.S. air carriers that have a website accessible for ticket purchase by the general public’. . . . Similarly, a depository institution must provide certain account disclosures to consumers before an account is opened. If the account is opened through electronic means, such as through a website, “the disclosures required . . . must be provided before the account is opened or the service is provided.” Again, the notice is not deemed to be necessary simply because the bank has a website—but is tied to the creation of an account, and further tied to the time period right before the service is provided.” (emphasis in original) (internal cites omitted).

⁷⁹ SIFH RR at 11.

⁸⁰ ICCFA RR at 21.

⁸¹ ICCFA RR at 19; NFDA RR at 40; NYSFDA RR at 4; SIFH RR at 9, 11, 12; CANA RR at 2.

⁸² SIFH RR at 12.

⁸³ NFDA RR at 40. The Indiana Funeral Director’s Association noted that 71.5% of the respondents in a recent survey “felt the mandatory inclusion of requiring funeral homes to fax, email, mail GPLs when requested did not further protect the

asserted the Commission should offer a safe harbor from undercover shopping⁸⁴ for funeral providers that make GPLs available on a conspicuous place on their websites.⁸⁵

2. Commission Staff Review of Funeral Provider websites

Commission staff conducted a review of almost 200 funeral provider websites from a cross-section of geographical areas and sizes.⁸⁶ As described below, the review showed robust website use by those funeral providers to promote their goods and services. Yet, most websites did not provide any pricing information. Fewer than half (40%) of the sites reviewed provided any information about the price of the goods or services offered.⁸⁷ Only about 24% of the websites contained an itemized price list or GPL and just over 10% displayed only starting prices or package prices.⁸⁸ Moreover, of the websites that contained pricing information, only some prominently displayed the GPLs or other price information on their website’s home page or on the drop-down menus present on that page.⁸⁹

Staff’s review found funeral providers were using websites for many aspects of their business.⁹⁰ For example, almost all of the reviewed websites posted obituary information about the deceased persons in their care, as well as

consumer, and increased the potential cost confusion if a face-to-face requirement to obtain a GPL were made optional.” IFDA RR at 4.

⁸⁴ Commission staff has historically conducted such shopping as part of its efforts to ensure compliance with the Rule.

⁸⁵ NYSFDA RR at 4 (FTC undercover price shoppers should not target funeral providers who have GPLs conspicuously disclosed on the website); NYSFDA RR at 3–4 (suggesting that instead of changing the Rule, the FTC encourage providers to post their GPLs online by providing a ‘safe harbor’ from undercover shopping for such providers since the GPLs are available at any time). One consumer suggested that the Rule should allow providers who choose to post price information online to include a “waiver in the contract for services stating that the consumer has seen all of the required disclosures online and has waived their right to receive them in person.” L. Northcutt RR at 2. The NYSFDA also asked that the FTC allow “adequate time” of one year before implementing any website disclosures, to give the industry time to comply. NYSFDA RR at 3–4.

⁸⁶ Shopping for Funeral Services Online: An FTC Staff Review of Funeral Provider websites (Oct. 2022) (“Report”). The full Report is available at <https://www.ftc.gov/reports/shopping-funeral-services-online>. While not based on a statistical sample, the review looked at a diverse group of funeral providers that are employing websites in their businesses. The results offer broad insights into the information providers of differing sizes and in areas with different population densities make available online.

⁸⁷ Report at 5.

⁸⁸ Id. at 5–6.

⁸⁹ Id. at 6.

⁹⁰ Id. at 4–5.

information about any related funeral, graveside, or memorial services. These websites provided dedicated pages for each of the deceased persons in their care, many of which could be shared electronically with others. The web pages also offered visitors the opportunity to post condolences for the family and others to see on the website and many offered ways to send flowers to the families of the deceased.

Two-thirds of the websites reviewed listed an email address to contact the provider and almost all offered online forms web visitors could submit to contact the funeral providers.⁹¹ A handful appeared to offer visitors the ability to chat online with the funeral provider, and almost 10% of the reviewed websites appeared to offer visitors the ability to make online selections of their funeral arrangements on the providers’ websites, without visiting the physical location.⁹² Almost 80% of the websites indicated an association with a third party company to create, design, or host the funeral providers’ websites.⁹³

3. Objectives and Alternatives

The record shows funeral providers typically use websites and electronic communication to communicate with the public about a variety of information, ranging from their contact information, obituaries, information about any funeral, graveside, or memorial services, pictures of caskets, and descriptions of the services they offer. Most, however, appear not to use such technology to share their prices with consumers. The record also shows that, given the growth of the internet and electronic communication, adding electronic media as means to display and distribute price information would greatly benefit consumers by providing access to accurate itemized prices with arguably minimal costs to funeral providers who already have websites. Such an amendment appears to fit squarely with the original purpose of the Rule and will make the Rule more in tune with how consumers generally obtain price information today. Therefore, the Commission wishes to explore how it could revise the Rule’s preventative requirements regarding the distribution of price information to include new technologies. The Commission is particularly interested in suggestions about how to tailor changes in ways that facilitate the ability of small businesses to comply with the Rule using new technologies.

⁹¹ Id. at 4.

⁹² Id. at 4.

⁹³ Id. at 9.

First, the Commission seeks comment on whether it should change the Rule's price list disclosure provisions to require funeral providers to prominently display either their GPLs or a prominently labeled link to their GPLs on their websites. The Commission is particularly interested in whether such a provision should apply to all funeral providers, all providers with a website, or only providers who sell funeral goods or services online.

Second, the Commission seeks comment on whether it should change the Rule's CPL and OBCPL distribution requirements to require funeral providers to prominently display either their CPLs and/or OBCPLs on their websites, or a clearly labeled link to these price lists.⁹⁴ The current Rule requires funeral providers to present their CPLs and OBCPLs before discussing or showing these items or pictures of these items.⁹⁵ This possible modification could apply to all providers, or just those providers who show pictures and/or descriptions of caskets, alternative containers, or outer burial containers.

Third, the Commission could consider a Rule change to require all funeral providers that maintain websites to display a prominent statement that users can request the providers' GPLs, CPLs, and OBCPLs with a link, button, or email address for people to use to request the price list or lists.⁹⁶ The Commission also seeks comment on whether to include a requirement that funeral providers must respond to online requests for price lists within a particular time frame. The Commission notes the current Rule does not require the CPL or OBCPL to be in a specific format, stating "[i]n lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner."⁹⁷ Commission staff have seen CPLs and OBCPLs in the form of binders, catalogs, and brochures in addition to written lists. Thus, the Commission seeks input as to whether

a requirement that the CPL and/or OBCPL be in a format that can be shared electronically provides any benefits to consumers or presents any challenges or costs for compliance, particularly for small business.

Fourth, the Commission is also considering whether to include social media pages or other new technological or electronic communication methods within the scope of covered websites for the purposes of any Rule modifications. For example, the Commission could require a funeral provider with a social media page to link to the provider's main website or provide an email address or other online mechanism for a user to request price list information. On a related note, the Commission seeks input on ways to amend the Rule to embrace new platforms and technologies as they develop so that both providers and consumers can benefit from new distribution methods without requiring a Rule change.

Fifth, the Commission seeks comment on whether the Rule should be modified to require all funeral providers (regardless of whether they maintain websites) to offer to send their GPLs, CPLs, or OBCPLs electronically to any persons who ask about the providers' goods and services, including those who ask for a copy of any of its price lists. This could include requests by telephone, text, email, weblink, social media, fax, U.S. Mail, or other new communication methods that may emerge in the futures. Providers would be required to send the information within a certain timeframe, unless the consumer declines to receive this information or does not provide an email address or other method for receiving the information. The Commission could also make an exception to this proposed requirement if a funeral provider prominently makes either its GPL, CPL, and OBCPL, or clearly labeled links to these documents, available on its website.⁹⁸

Sixth, another approach the Commission is considering would require all funeral providers to give electronic copies of their GPLs at the beginning of any arrangement

discussion or process that does not take place in-person unless a hard copy has already been provided. For example, if the arrangements are discussed on the telephone, the provider would need to send an electronic copy of the GPL to the consumer before continuing the conversation (if the consumer has not yet received the information). If the consumer is making selections online, the provider would need to offer a prominent link to its GPL before allowing the consumer to proceed with selections. Electronic copies of the CPLs and OBCPLs would also need to be provided if showing or discussing those items or their prices, or if consumers are making selections of those items online.

Seventh, if electronic distribution is required, the Commission is considering whether the Rule should include a requirement concerning how often providers should update the electronic GPLs, CPLs, and OBCPLs. The current Rule requires a funeral provider to list an effective date on its price lists. To be in compliance with the Rule, the price list must be accurate. Therefore, funeral providers must update their lists regularly as their prices change. The costs to businesses of updating electronic lists would seem quite minimal and further the goal of providing consumers with accurate itemized information. Should the Commission set a specific time frame for updating online information?

Eighth, the Commission is considering another potential modification to the Rule's preventative requirements to include electronic means for distribution of the statement of funeral goods and services selected. Currently, the Rule requires funeral providers to give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements.⁹⁹ When the arrangements discussions take place in person, the statement is provided at the end of the meeting. When consumers make arrangements via the telephone or online, the funeral provider could be required to immediately send an electronic copy of the statement of goods and services selected, rather than giving the list to consumers in a less timely way, for example by sending the statement via U.S. Mail. Electronic distribution of the statement could provide tremendous benefits to consumers by providing more timely access to the total cost of funeral

⁹⁴ The Rule currently requires funeral providers to either include the information contained in their CPLs or OBCPLs on their GPLs, or list the price ranges for caskets, alternative containers, and outer burial containers on their GPLs. 16 CFR 453.2(b)(4)(iii). Thus, this provision would only be necessary for those providers that only include the price ranges for caskets, alternative containers, and outer burial containers on their GPL.

⁹⁵ 16 CFR§ 453.2(b)(2)(i) and 453.2(b)(3)(i).

⁹⁶ Funeral providers could also be required to state on the GPL that the CPL and OBCPL are available upon request via one of these electronic methods.

⁹⁷ 16 CFR 453.2(b)(2)(i).

⁹⁸ Funeral providers would still be required to answer questions of persons who ask over the telephone about the providers' offerings or prices. Note that the change considered would not require a funeral provider to affirmatively send or offer to send price list information electronically unless a person first asks about its offerings or prices. This approach is consistent with the Commission's prior decision to repeal the original Rule's requirement that providers affirmatively state price information over the telephone even when a caller did not ask for the information. See 1994 Statement of Basis and Purpose, 59 FR 1592, 1600–1602 (Jan. 11, 1994).

⁹⁹ 16 CFR 453.2(b)(5).

arrangements and appears to present minimal costs to providers.

B. Disclosure of Crematory Fees and Other Costs

The Review also elicited comment about whether to require funeral providers to disclose on their GPLs information about all crematory-related fees, including third party fees, and other costs, such as fees for death certificates and local permits. The Rule currently requires funeral providers to list the prices for 16 items (if offered), including the prices for the direct cremation services offered, with separate prices for direct cremation with or without an alternative container, and a description of the services and container included in each price.¹⁰⁰ A funeral provider may include the use of its crematory or a third party's crematory in its GPL's description of the services and costs for direct cremation services. Funeral providers who do not operate their own crematories and have not included the cremation fees in the price for direct cremation on the GPL must list the fees charged by an outside crematory, or a good-faith estimate of those fees, along with additional crematory-related fees as "cash advance" services in the statement of goods and services selected.¹⁰¹

1. Summary of Comments

Several commenters asked that the Rule be changed to require funeral providers to disclose all crematory fees on the GPL, including third party crematory fees, as well as any additional crematory-related fees such as crematory transportation fees.¹⁰² These commenters argued it is deceptive not to include these additional fees on the GPL

when listing the price for cremation services.¹⁰³ They asserted a reasonable consumer would expect a fee for "cremation services" reflects the full cost of the cremation, even if it is performed by a third party crematory,¹⁰⁴ and may not learn until it is time to pay the bill they also have to pay additional third party crematory fees.¹⁰⁵

According to these commenters, while most funeral homes appear to voluntarily disclose all third party crematory fees on their GPL, a substantial minority do not.¹⁰⁶ For example, a 2016 survey by the FCA and CFA of 142 representative funeral homes nationwide found 22 percent did not disclose third party crematory fees on the GPL.¹⁰⁷ Consumer Checkbook found 40 percent of "funeral homes don't disclose crematory fees on their GPLs, or even note that such a fee might exist."¹⁰⁸ Commenters reported third party crematory fees can range from \$250 to \$600.¹⁰⁹

Several commenters said requiring third party crematory fees to be included on the GPL would "help[] ensure that consumers have accurate pricing information," and "create a fairer 'playing field' for all funeral

homes."¹¹⁰ Some asked that the Rule be amended to mandate the full disclosure of all crematory fees.¹¹¹ Others felt funeral homes who use a variety of third parties should only have to disclose a price range,¹¹² and some suggested a disclaimer that a crematory fee is not included is one option to avoid harm to consumers.¹¹³

Some commenters were opposed to amending the GPL requirement to require the disclosure of third party crematory fees on the GPL.¹¹⁴ Some contended that over 70% of funeral providers use a third party crematory to perform their cremations,¹¹⁵ and these funeral providers have no control over the amount charged by third party crematories.¹¹⁶ Some commenters reported many funeral providers work with multiple crematories that charge different fees,¹¹⁷ and it would be unduly burdensome to require providers to constantly monitor all of these fees charged by separate businesses, and then update and re-print the GPL each time the third party fees changes.¹¹⁸

2. Objectives and Alternatives

The Commission is considering whether to amend the Rule to provide better disclosure for consumers about

¹⁰⁰ CFA RR at 10–11 (stating "those that do not disclose have an unfair advantage over those that do").

¹⁰¹ CR RR at 3 ("The price list should be required to include any products and services to be obtained from third parties and treated as 'cash advance' items by the funeral home. It should include crematory fees, and other fees and charges of whatever kind that the consumer would pay to the funeral home. . ."); FCA GKC RR at 1; AARP RR at 3; SIFH RR at 12; C. Tregillus RR at 10.

¹⁰² TINA RR at 3–4; FCA RR at 10. But see C. Tregillus RR at 9–10 (a price range would not be helpful as it would create unnecessary confusion for consumers).

¹⁰³ FCA PA RR at 1. See also FCA VABR RR at 3 (the Rule could either require the third party crematory to be included on the GPL or it could require a disclaimer identifying the crematory provider who will be charging an additional fee). But see FCA AZ RR at 3–4 (providing real-life examples of disclosures that would not be helpful; such as price lists that contained "low-ball pricing" that is not reflective of what consumers will have to pay, that included only a "fine print" disclosure that crematory or medical examiner fees are not included in that pricing). Consumer Reports asked that the GPL "include any products and services to be obtained from third parties and treated as 'cash advance' items by the funeral home. . . [including] fees and charges of whatever kind that the consumer would pay to the funeral home." CR RR at 3; see also FCA VABR RR at 3 (the newspaper obituary fee should be listed in the GPL).

¹⁰⁴ NFDA RR at 60–61; NJSFDA RR at 5; NYSFDA RR at 4–5.

¹⁰⁵ NFDA RR at 60 ("According to the 2019 NFDA Member General Price List Study, over 70% of funeral homes use a third-party crematory to perform their cremations.').

¹⁰⁶ Id.; NJSFDA RR at 5; NYSFDA RR at 4–5.

¹⁰⁷ NFDA RR at 60.

¹⁰⁸ NJSFDA RR at 5; NYSFDA RR at 4–5.

¹⁰³ FCA of VABR RR at 3; CMS RR at 1; FCA RR at 9–10; SIFH RR at 12.

¹⁰⁴ FCA PA RR at 1 ("No normal person would ever think that the advertised price of a cremation does not include the actual crematory fee(s)..."); FCA RR at 9–10.

¹⁰⁵ FCA RR at 9–10.

¹⁰⁶ CFA RR at 10–11; see also SIFH RR at 12 (Many online only providers "advertise a very low price for a "direct cremation," but then charge the consumer a number of add-on fees that substantially raise the actual price of the service"); FCA CT RR at 2 (2019 survey found that some funeral homes and many cremation providers which touted "inexpensive cremation" failed to include the price of the container, the required Medical Examiner's charge, or an unlisted transportation fee to the ME's or the crematory to pack up the ashes); FCA WMA RR at 1 (reporting that consumers are surprised to discover that the GPL cremation fee does not include the actual cremation or the required \$200 medical examiner fee).

¹⁰⁷ FCA RR at 9–10, citing Joshua Slocum, Stephen Brobeck, "Cremation Services: Highly Variable and Misleading Pricing, Lack of Disclosure, and Violation of Federal Rules," Funeral Consumers Alliance and Consumer Federation of America (September 2016), at 3, <https://funerals.org/wp-content/uploads/2020/02/2016-9-12-FCA-CFA-Cremation-Report.pdf>; see also FCA RR at 10–11.

¹⁰⁸ CC RR at 4.

¹⁰⁹ TINA RR at 3–4 citing Joshua Slocum, Stephen Brobeck, "Cremation Services: Highly Variable and Misleading Pricing, Lack of Disclosure, and Violation of Federal Rules," Funeral Consumers Alliance and Consumer Federation of America (September 2016), at 3, <https://funerals.org/wp-content/uploads/2020/02/2016-9-12-FCA-CFA-Cremation-Report.pdf>. See also FCA RR at 10–11; FCA RR at 9–10.

¹⁰⁰ 16 CFR 453.2(b)(4).

¹⁰¹ *Complying with the Funeral Rule*, FTC Business Compliance Guide available at https://www.ftc.gov/system/files/documents/plain-language/565a-complying-with-funeral-rule_2020_march_508.pdf.

¹⁰² CFA RR at 10–11; LRPCA RR at 1; FCA VABR RR at 1, 3; FCA GKC RR at 1; FCA PA RR at 1; FCA GR RR at 1; FCA SC RR at 1; FCA RR at 9–10; CR RR at 3; FCA AZ RR at 3–4; FCA MN RR at 1; FCA CT RR at 2; TINA RR at 3–4; Paige Hetherington, GraceFull Dying RR at 1; MBS RR at 1; C. Tregillus RR at 9–10; Imperial Caskets RR at 1; Charter Funerals RR at 1; Diversity Collaborative RR at 1; Borderland RR at 2; SIFH RR at 12; AARP RR at 3; M. Klein RR at 6–7. Some commenters complained that funeral providers do not always disclose all of their own fees or third party fees on the GPL. See, e.g., AG RR at 4 (noting that some funeral providers list a fee for the death certificate in the GPL, but others do not, and "it can be upsetting for consumers to be asked to pay additional amounts they are not aware of"); FCA CT at 2 (stating that some funeral homes omitted required items and idiosyncratic fees from the GPL, including the price of the container, the mandatory Medical Transportation Fee, and unlisted transportation fees).

third-party crematory-related fees, as well as other costs not required to be listed on the GPL. The Commission seeks comment on a whether funeral providers should be required to list any applicable third-party crematory fees on the GPL in close proximity to the description and price for direct cremation. Another approach would be to require a funeral provider that does not include the cost of the third-party crematory fees in the price for direct cremation to include a statement on the GPL that the cremation fee does not include third party crematory fees, along with a typical price range for these fees. Such a statement would need to be placed in close proximity to the price for cremation.

In addition to third-party crematory fees, the Commission wishes to explore whether the Rule should be clarified to state when other fees, not included in the price of the services, should be disclosed on the GPL.¹¹⁹ For example, these other fees may include separate charges for the weight of the deceased, removal of a medical device, storing remains, expedited cremation or burial, death certificates, county permits, medical examiner permits, and supplies and procedures related to infectious disease control. The Commission seeks comment on whether these or other costs related to direct cremations or immediate burials not included in the price of those services should be added to the items required to be disclosed on the GPL, and whether such items should appear in close proximity to the price for direct cremations and immediate burials. Another approach to address concerns about other costs not currently required to be listed on the GPL would require a funeral provider to include on the GPL a statement in close proximity to the price for direct cremation that lists the additional fees the funeral home knows consumers may have to pay, along with a typical price range for those fees. Alternatively, funeral providers could be required to include a statement in close proximity to the prices for direct cremation and immediate burial simply stating additional fees may apply.

¹¹⁹ Some staff advisory opinions address this issue. See Funeral Rule Advisory Opinion 11-1 (2011), available at <https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-11-1> and Advisory Opinion 13-1 (2013), available at <https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-13-1>; and Advisory Opinion 16-2, available at <https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-16-2>. The Commission believes additional clarity on this issue will provide benefits to industry and consumers.

C. Reduced Basic Services Fee

The Rule currently allows funeral providers to charge only one non-declinable fee, for the “services of the funeral director and staff” (or “the basic services fee”).¹²⁰ This fee “grew out of the Rule’s unbundling provisions, which required funeral providers to itemize prices. These unbundling requirements meant 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.”¹²¹ In recognition that “irrespective of the combination of goods or services [a consumer selects], the very process of selection itself will involve use of the funeral provider’s services,” the Commission permitted funeral providers to charge a basic services fee.¹²² The Commission intended, however, that this fee should include only the charges for a funeral provider’s basic services associated with arranging and planning a funeral (and a portion of overhead, if the provider chooses to include it), and not the services associated with providing the other 16 declinable items for which itemization is required on the GPL.¹²³

In the 2008 Rule Review, divided commenters asked the Commission to consider eliminating the fee entirely or reformulating it. The Commission declined to do so, stating as follows:

The purpose of the Rule is not to regulate prices. . . . 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.¹²⁴

The current Rule Review solicited comment on whether to change the Rule’s requirement that funeral providers can charge only one basic services fee in most instances, and whether two of the exceptions to the

¹²⁰ The 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).

¹²¹ 73 FR 13740, 13746 (Mar. 14, 2008).

¹²² *Id.*

¹²³ *Id.*; see also 1994 Statement of Basis and Purpose, 59 FR 1592, 1607–1609.

¹²⁴ 73 FR 13740, 13747 (Mar. 14, 2008).

basic services fee provision should be amended to permit some common limited additional services without the funeral provider having to charge its full basic services fee.

1. Summary of Comments

Commenters again were divided on whether the Commission should eliminate or reformulate the basic services fee or maintain the status quo.

Some favored eliminating the fee.¹²⁵ They said the basic services fee, which has no cap and is charged by almost all funeral homes, confuses consumers.¹²⁶ Moreover, to these commenters, the basic services fee can be exorbitant.¹²⁷ The House Committee of Energy and Commerce said if the Commission determines a non-declinable basic services fee is necessary, then consumers should be made aware of what they are being charged for, by requiring funeral providers “to provide detailed descriptions” of the fee, including the total amount and what services are covered by it.¹²⁸ It also asked the Commission to cap the basic services fees.¹²⁹

Several industry groups and State Attorneys General argued funeral providers should be permitted to charge a variable fee, based on the service provided,¹³⁰ or a reduced service fee for consumers requesting a limited viewing or visitation.¹³¹ To these commenters, the funeral landscape has changed where, funeral providers “offer a wide variety of different service levels—memorial services, visitations, private viewings, full catered events, and more,” and charging one basic services fee for all of these services penalizes cash-strapped consumers and asks them

¹²⁵ CFA RR at 11; FCA WMA RR at 2; FCA RR at 11–12; CR RR at 4; M. Bern-Klug RR at 2–3; M. Klein RR at 8. The NJFSDA and another commenter recommended the Commission remove from the Rule the option to incorporate the basic service fee into the price of caskets. NJFSDA RR at 5–6 (noting that “consumer trends” are “moving away from disposition options that require the use of caskets”); see also C. Tregillus RR at 4 (16 CFR 453.2(iii)(C)(2) should be deleted as no longer needed, unless “there is opposition from the funeral industry based on evidence that there are still funeral providers that inflate their casket prices to cover their unallocated overhead costs and provide a profit (rather than charging a non-declinable basic services fee”).

¹²⁶ FCA RR at 11–12; M. Bern-Klug RR at 2–3.

¹²⁷ FCA RR at 11; CFA RR at 11. “According to 2017 data released by the NFDA, the median basic services fee was \$2,100, which is close to the price of a casket.” CFA RR at 11. See also M. Bern-Klug RR at 2 (University of Iowa collected 48 GPLs in 2016; the basic services ranged from \$245–\$3,750).

¹²⁸ House Committee RR at 2 (“[I]f they are charged a fee, consumers should know what they are paying for.”)

¹²⁹ *Id.*

¹³⁰ NFDA RR at 66–70.

¹³¹ AG RR at 5.

to subsidize the overhead involved in a “full-service, traditional funeral with all the bells and whistles.”¹³² Allowing a variable fee or reduced basic services fee also “would help increase consumer choice, provide transparency, and allow for cost-savings,”¹³³ and “allow lower costs for simpler services, free funeral homes to offer innovative options and more choice for consumers, and maintain the basic price structure the FTC designed when it developed the Funeral Rule.”¹³⁴ Another industry group, however, argued a variable basic services fee has a “potential for abuse practices” as it “creates an opportunity for funeral providers to manipulate the content of a ‘minimum service’ in such a way that could induce purchasers to utilize their firm (because of the published low price) and then lead purchasers into making other added purchases not included in the ‘minimum service.’”¹³⁵

Finally, one consumer advocacy group and one individual asked the Commission to preserve the status quo.¹³⁶ The consumer advocacy group asserted funeral providers provide a “true service”, and the basic services fee “support[s] the continued health of

¹³² SIFP RR at 12–13. See also IFDA RR at 4 (noting that 68.75% of Indiana funeral providers “were in favor of a partial non-declinable fee as alternative forms of services and dispositions become available . . . [T]he overall general feeling is the consumer will be paying for services more representative of what they receive professionally rather than a ‘catch all’ fee which is what the non-declinable has become over time”).

¹³³ AG RR at 5.

¹³⁴ *Id.* at 5. The NFDA argues that if “the Funeral Rule is modified to allow a variable basic services fee, the mandatory disclosure in Section 453.2(b)(4)(iii)(C)(1) should be revised.” NFDA RR at 71. NFDA’s suggested language is as follows: “A fee for our basic services will be added to the total cost of the funeral arrangements you select. (This basic services fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving of remains).” *Id.*

One commenter thought a “separate cost of a family viewing should be allowed without triggering a basic services charge.” See Givens Estate RR at 1. Another argued that the FTC should not “expand the definition of direct cremation and immediate burial to allow the addition of other services without charging the full basic services fee,” because providers “are really seeking relief from a very real marketplace constraint on how high their regular basic services fees can be without making their prices uncompetitive. Consumers faced with a full basic services fee increase of a thousand dollars or more just for adding a memorial service to a direct cremation are likely to take their business to a provider with a lower basic services fee, or find another location or provider for a separate memorial service.” C. Tregillus RR at 12.

¹³⁵ NJSFDA RR at 3.

¹³⁶ FCA VABR RR at 4; C. Tregillus RR at 11. The NFDA also argued against eliminating the basic services fee: “From a practical standpoint, ‘it is virtually impossible to eliminate the non-declinable nature of the basic service fee’—as all consumers are using the services of the funeral director and staff. NFDA RR at 66–70.

these businesses.”¹³⁷ The fee “assures the consumer that there are specific expectations for minimal costs and insures the funeral home that their service can be adequately compensated.”¹³⁸ The individual argued banning the fee “is likely to have unintended and undesirable consequences. Not the least of these would be a return to embedding basic services fee costs in the prices of caskets, and now, the prices of urns, leading to greater resistance by providers to accepting lower-cost third-party caskets and urns, and thereby creating new enforcement challenges for the FTC.”¹³⁹

2. Objectives and Alternatives

The Commission does not believe the basic services fee should be eliminated, for the reasons set forth in the 2008 Regulatory Review Notice. The Commission, however, is interested in exploring whether consumers and businesses could benefit from a limited expansion of two of the basic services fee provisions—direct cremation and immediate burial. Commission staff has opined the Rule currently permits funeral providers to charge a lower basic services fee for these two types of services, as well as for forwarding and receiving remains, if they wish because of the limited use of the funeral provider’s facilities and staff time generally associated with those services.¹⁴⁰ The definitions for both direct cremation and immediate burial exclude situations when a customer also wants a formal viewing or a visitation, even if it is a limited viewing or visitation.¹⁴¹ If a customer wants to add a brief visitation to a direct cremation, the funeral provider must charge its full basic services fee. Thus, clarifying in the Rule concerning when a reduced basic services fee may be charged may provide benefits for providers and customers. While not a “variable basic services fee,” this approach would effectively give consumers a few more options in the reduced fee structure.

¹³⁷ FCA VABR RR at 4.

¹³⁸ *Id.* at 1.

¹³⁹ C. Tregillus RR at 11.

¹⁴⁰ See, e.g., Funeral Rule Advisory Opinion 09–6 (2009), available at https://www.ftc.gov/sites/default/files/documents/advisory_opinions/opinion-09-6/opinion09-6.pdf. The Commission intends to make this position unambiguously clear in this rulemaking.

¹⁴¹ 16 CFR 453.1 (g) (defining a “direct cremation” as a “disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present”); 16 CFR 453.1(k) (defining “immediate burial” as a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service”).

Therefore, the Commission is considering clarifying in the Rule that funeral providers may charge a lower basic services fee for forwarding and receiving remains, immediate burial, and direct cremation, if they wish, because of the limited use of the funeral provider’s facilities and staff time generally associated with those services. In addition, the Commission is considering modifying the definition of direct cremation and immediate burial to allow those offerings to include limited viewings or visitations or other additional services, and seeks comments on whether this modification should be made and, if so, how. Funeral providers who wish to could offer these additional services as options, listing the add-on costs for the additional services on the GPL, along with the basic services fee charge due if the limited visitation option is selected. Thus, for example, a funeral provider would list on its GPL the price it charges for direct cremation, describing the services included and giving the price with and without a cremation container, as well as the additional cost if a purchaser wanted to add a limited visitation or viewing at its facility, describing the limits for that visitation, such as the amount of time or number of guests, and the associated basic services fee. The Commission seeks comment on how this change would impact both consumers and businesses, and how to clearly disclose the additional options for these two reduced basic services on the GPL.

D. New Forms of Disposition

The Review elicited some comments about methods of human disposition that have changed since the Rule was enacted. The Rule currently defines “cremation” as “a heating process which incinerates human remains,”¹⁴² but does not mention whether newer techniques for disposition of human remains, such as alkaline hydrolysis and natural organic reduction,¹⁴³ are included in this definition. Such services do not fit within the definition of direct cremation or immediate burial but are still subject to the Rule. The Commission is considering modifications to clarify application of the Rule for providers of new forms of

¹⁴² 16 CFR 453.1(e).

¹⁴³ Natural organic reduction is a new type of disposition that became legal in the State of Washington as of May 1, 2020, and was scheduled to be offered to funeral providers as soon as March 2021. This process differs from green burial interments because it transforms the deceased into soil in 4–6 weeks. See H.B. 2574—Natural Organic Reduction—Q&A, https://www.oregonlegislature.gov/marsh/Documents/HB2574_Natural_Organic_Reduction.pdf?ID=43 (last visited August 17, 2022).

disposition and consumers considering these options.

Few commenters provided input on whether the Rule should be updated to reflect new alternative methods of disposition. One commenter suggested the Commission amend the Rule to add “natural organic reduction process” and “green burials” as additional methods of disposition, rather than incorporated under the umbrella definition of “cremation.”¹⁴⁴ To the commenter, the natural organic reduction process is different from cremation: for example, unlike with a cremation, the use of alternative containers is not needed.¹⁴⁵ Another commenter agreed natural organic reduction processes should not be included in the definition of “cremation” in the Rule, but argued that because these methods of disposition are not available in most of the country, the Rule does not need to be altered to address them.¹⁴⁶

An alternative funeral provider commented to ask to be allowed to charge “a uniform price” for disposition via natural organic reduction, because “it is neither practical nor either feasible for [the provider] to itemize the individual services that will be available for all decedents and next of kin as part of the [natural organic reduction] process as piecemeal offerings, unlike the way this may be done for the traditional disposition methods of direct burial and cremation.”¹⁴⁷

The Commission is considering modifying the Rule to explicitly include new methods of disposition, such as alkaline hydrolysis and human natural organic reduction. The Rule could then clarify that such providers could offer direct or immediate services with a reduced basic services fee. The Commission is also considering updating the Rule to adapt to new methods of disposition, for example the Rule requirements to offer and provide disclosures about alternative containers for direct services. The Commission wants to ensure the Rule does not stifle innovation and believes the proposed changes help level the playing field for providers of new alternative methods.

¹⁴⁴ Recompose RR at 2–4. One commenter suggested that the FTC define “green burial” to “make clear that the term applies not only to provider arrangements for casketed burials in green cemetery plots, but also to arrangements using mushroom burial suits, biodegradable tree urns, and body pods in lieu of caskets.” C. Tregillus RR at 10–11. Another commenter asked that, if a funeral provider offers green burials, what “this includes and the requirement for the burial board or container should be specifically stated.” S. Robinson RR at 1.

¹⁴⁵ Recompose RR at 2–4.

¹⁴⁶ NFDA RR at 64–65.

¹⁴⁷ Recompose RR at 1, 3.

E. Embalming Disclosure

The Commission also elicited comments about whether to modify the Rule’s current disclosure related to whether embalming may be required. The Rule currently requires funeral providers to include on the GPL a disclosure that states “[e]xcept in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.”¹⁴⁸

1. Summary of Comments

Several commenters asked the Commission to clarify the embalming disclosure, although they disagreed on how it should be clarified.¹⁴⁹ No commenter asked the Commission to keep the current disclosure as is.

Several consumer advocates, government agencies, and one individual asked the Commission to either eliminate the embalming disclosure requirement or amend it to indicate “that the requirement is only that of the funeral home, not that of the state,” to avoid consumer confusion.¹⁵⁰ They said no state requires that viewed bodies be embalmed, although some “require embalming only in situations where refrigeration is not available or when burial/cremation cannot happen with a ‘reasonable’ or defined period of time.”¹⁵¹ When consumers “are told by a funeral home that they will not permit viewing without embalming,”¹⁵² consumers mistakenly assume this embalming is mandated by law and the “only way to avoid embalming is to choose direct cremation or immediate

¹⁴⁸ 16 CFR 453.3(a)(2)(ii).

¹⁴⁹ FCA RR at 12–13; CFA RR at 11; NFDA RR at 71–73; TINA RR at 4; FCA WMA RR at 2; CR RR at 3; C. Tregillus RR at 13; AG RR at 5; UUFV RR at 2; Borderland RR at 2.

¹⁵⁰ CFA RR at 11; see also FCA RR at 12; TINA RR at 4; FCA WMA MA RR at 2; CR RR at 3; C. Tregillus RR at 13; AG RR at 5; Borderland RR at 2. FCA also recommended that “Funeral providers should also be required to provide a numerical or statutory citation if there are legal requirements in the provider’s state that mandate embalming in any circumstance.” FCA RR at 12.

¹⁵¹ FCA RR at 13 (compiling statistics from Slocum and Carlson, *Final Rights: Reclaiming the American Way of Death*, 2011 Upper Access Publishers); see also CFA RR at 11.

¹⁵² UUFV RR at 2 (“at least one funeral home in Visalia, California have told potential purchasers that embalming and purchasing a casket is ‘required’ by their funeral home as a matter of ‘our policy’ rather than as a legal requirement. . . . The salesman I talked to claimed it was a liability issue for them, asserting that an un-embalmed body could theoretically make them subject to lawsuits or embarrassment.”).

burial.”¹⁵³ Modifying the disclosure will also “clarify persistent questions raised by the growing segment of funeral providers who do not offer embalming at all” due to their religious traditions or because they only offer simple arrangements.¹⁵⁴

The NFDA agreed the embalming disclosure should be amended, but for different reasons.¹⁵⁵ It argued embalming may be required under state law: “37 of 50 states require that deceased human remains either be embalmed or refrigerated within a certain time span following death” and “46% of funeral homes do not have refrigeration facilities.”¹⁵⁶ To the NFDA, the current disclaimer is misleading “in that it implies to the consumer that embalming is rarely required by law.”¹⁵⁷ The NFDA suggested the Rule be amended to plainly explain to consumers embalming is not required in 13 states, and, in the other 37 states, embalming may be required. Funeral providers can then “explain the requirements of state law at the end of the mandatory disclosure.”¹⁵⁸

2. Objectives and Alternatives

The embalming disclosure is a preventative requirement enacted because of deceptive acts or practices by funeral providers that generated “substantial consumer confusion about what the law requires about embalming.”¹⁵⁹ The Commission is considering changing the language of this disclosure and seeks comment on how the disclosure can be improved to educate consumers accurately on the limited circumstances when embalming may be required under the laws of some states.

For example, one option the Commission wishes to explore is

¹⁵³ FCA RR at 12.

¹⁵⁴ *Id.* at 12–13.

¹⁵⁵ NFDA RR at 71–73. The NFDA also asked that the Rule be modified to only require providers that offer embalming to use the embalming mandatory disclosure. *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 71.

¹⁵⁸ *Id.* The NFDA proposed that the Rule be amended to state that “except as may be noted below, embalming may not be required by law” and that “The phrase ‘except as may be noted below’ shall not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances. If state law does require embalming in some circumstances, the funeral provider may explain the state law requirements for embalming following this disclosure. This disclosure only has to be placed on the general price list if the funeral provider offers embalming.” *Id.*

¹⁵⁹ 47 FR 42260, 42275 (1982) (finding that “most funeral directors d[id] not disclose that embalming is optional” to consumers, and “a significant number of funeral providers have affirmatively misrepresented state laws regarding embalming”).

modifying the language of the embalming disclosure to require the funeral provider to state the relevant requirements in its jurisdiction. Thus, if the provider operates in a state that never requires embalming by law, the provider must state: “Embalming is not required by law in __ (name of state) __.” If the provider operates in a state that requires embalming by law under certain circumstances, the provider must state those circumstances: “Embalming is required in __ (name of state) __ when __ (list the state’s legal requirement).” If the provider operates in multiple states with different requirements for embalming, the provider would list the requirements for each state in which the provider operates. If the provider has its own policy of requiring embalming for visitations, it could then state that on the GPL as long as it is clear it is the establishment’s policy.

F. Price List Readability

The Commission elicited comments about issues with the format and readability of the itemized price lists. The Rule currently requires the GPL to list the itemized prices for 16 specific goods and services, if offered,¹⁶⁰ as well as several mandatory disclosures and placement requirements for those disclosures.¹⁶¹ Other than those requirements, the Rule currently does not mandate a specific format for the GPL.

1. Summary of Comments

Several commenters urged the Commission to modify the Rule’s provisions regarding price lists.¹⁶² Many argued the price lists are confusing to read,¹⁶³ often “lack important information on some fees,”¹⁶⁴ and sometimes contain inconsistent description of fees, such as the inclusion or exclusion of death certificate fees, which makes it hard for consumers to compare prices.¹⁶⁵ For

example, one commenter stated one GPL he reviewed contained four pages of direct cremation options, and “you practically need a Ph.D. to parse out the differences and see what meets your specific needs.”¹⁶⁶ Similarly, the DC Attorney General conducted a survey that found many inconsistencies in how DC funeral providers disclosed prices on their GPLs, including inconsistencies in how visitation and viewings prices and death certificate fees were disclosed.¹⁶⁷

Commenters also pointed out some funeral providers structure the GPL to make it harder for consumers to notice the mandatory disclosures, such as by putting them after information about packaged funerals,¹⁶⁸ listing “itemized goods and services only after 5–10 pages of packages in . . . a clear attempt to distract the consumer,” and using “8-point type or similar font” for the mandatory disclosures, “knowing that it will be overshadowed by the large type and attractive lay-out with which they offer packages.”¹⁶⁹

Several Attorney General offices encouraged the Commission to adopt a standardized GPL format through consultation with funeral homes, consumers, consumer advocates, and government agency representatives. They stated a standardized format will inhibit funeral homes from imposing illegal charges or otherwise violating the Funeral Rule,¹⁷⁰ and benefit businesses, by providing certainty and lowering compliance risks.¹⁷¹ Other commenters agreed and argued a standardized itemized price list, if done “with the

off buying a package.”; FCA EMA RR at 1 (“As things stand now, price and service lists vary considerably in how what is available is arranged and described. This makes comparisons among funeral homes difficult at best, even when consumers shop and plan in advance of need . . .”).

¹⁶⁶ M. Klein RR at 5–6.

¹⁶⁷ AG RR at 4.

¹⁶⁸ TINA RR at 4; FCA RR at 14.

¹⁶⁹ FCA RR at 14; see also R. Zeldin RR at 4 (“SCI DBA Dignity Memorial provides overbearing price lists designed to overwhelm and confuse the consumer and burying the itemized list at the end. These price lists are known to be over 50 pages long so as to include each and every possible package deal they could come up with!”).

¹⁷⁰ AG RR at 4; FCA RR at 14; see also TINA RR at 4.

¹⁷¹ House Committee RR at 2; L. Northcutt RR at 3 (“If funeral homes decide to post their disclosures online, it would be helpful to consumers if that information was provided in a standardized format. This requirement will impose limited burdens on businesses who are choosing to move this information online and greatly assist consumers who want to be able to compare services online from their homes.”); AG RR at 4 (“A standard form could lay out the specific disclosures, making it easier for funeral homes to assess whether their lists satisfy regulatory requirements. Standardization would therefore streamline both compliance and enforcement.”).

appropriate level of clarity. . . . [will] significantly facilitate funeral home compliance,”¹⁷² minimize consumer confusion,¹⁷³ make it easier for consumers to compare prices between funeral homes.¹⁷⁴

Commenters expressed diverse views about what a standardized disclosure should look like. Ideas ranged from consulting with advocates, plain language experts, and government agency representatives to draft a standard disclosure,¹⁷⁵ creating a standard, machine-readable document, which would “make the information more easily available through the use of accessibility devices,”¹⁷⁶ and mandating that “the list should begin with clear and prominent introductory statements.”¹⁷⁷ Others commented the GPL should be “organized in a consumer-friendly way”¹⁷⁸ or with a “plain English explanation of its contents,”¹⁷⁹ that the mandatory disclosures should appear on the GPL before other goods, services, or packages,¹⁸⁰ the Rule should mandate that the GPL not contain any

¹⁷² NFDA RR at 4.

¹⁷³ See, e.g., L. Bramble RR at 1 (“Mortgage lenders are required to use a standardized HUD1 statement to make fees easier to understand and compare; standardized terms and forms make it easy for a person who is already overwhelmed to make a knowledgeable and confident decision.”).

¹⁷⁴ AG RR at 4; House Committee RR at 2; FCA SC RR at 1.

¹⁷⁵ AG RR at 4–5; see also C. Tregillus RR at 13 (suggesting copy testing of key disclosures). The AGs also encouraged the Commission to include unconventional burial services in the GPL and noted that “[p]eriodic revisions will be necessary.” AG RR at 4–5.

¹⁷⁶ House Committee RR at 2.

¹⁷⁷ CR RR at 3 (the GPL should begin with the following statements: “• that the consumer has the right to choose among options and to choose individual products and services separately, • that, unless specified otherwise, no product or service is required by law, and • that any product or service that is required by law will be accompanied with a specific reference to the statute or ordinance that requires it, and a clear and specific description of the circumstances under which it is required”) (emphasis in original).

¹⁷⁸ Id. at 3. Other ideas included (1) requiring the right-of-selection disclosure to be prominently displayed and the “itemized price lists to be listed in at least as conspicuous a manner as the package deal,” see TINA RR at 4; (2) the use of standard definitions of services to enable cost comparisons, see FCA EMA RR at 1; M. Bern-Klug RR at 2–3; C. McTighe RR at 1; (3) “the addition of a disclaimer as to what are extraneous services and which services legally require the participation of a funeral home,” see FCAP RR at 1; and (4) that the GPL be amended to include whether the facility offers body donation or eye/cornea donation, or green burial, see Eye Bank Ass’n of Am. RR at 1; M. Bern-Klug RR at 4.

¹⁷⁹ See, e.g., D. O’Brien RR at 1.

¹⁸⁰ CFA RR at 11; FCA VABR RR at 2–3 (noting that “regulations of the state of Virginia include a recommendation of a sample GPL in which the Basic services fee listing is first, after the required disclosure statement”).

¹⁶⁰ 16 CFR 453.2(b)(4).

¹⁶¹ See, e.g., 16 CFR 453.3(b)(2).

¹⁶² AG RR at 4; FCA VABR RR at 1; CFA RR at 11; FCA RR at 14; FCA WMA RR at 1; CA RR at 2; FCA SC RR at 1; FCA CT RR at 1; CR RR at 3–4; TINA RR at 4; M. Turner, Full Cycle of Living and Dying RR at 1; House Committee RR at 2; Borderland RR at 2; M. Bern-Klug RR at 2–3; M. Klein RR at 5–6; NYSFDA RR at 4.

¹⁶³ CC RR at 4; see also K. Griffith RR at 1.

¹⁶⁴ CC RR at 4; see also AG RR at 4 (noting that a survey of GPLs conducted by the DC Attorney General found that some funeral providers do not list a separate charge for viewings or visitations).

¹⁶⁵ AG RR at 4; House Committee RR at 2; see also CC RR at 4 (“Another common problem is that our researchers must compare a la carte pricing listed on GPLs with packages sold by many funeral homes. It’s usually quite complicated to determine whether our hypothetical family would be ‘better

information not expressly required or permitted by the Rule,¹⁸¹ and the Commission should create a fill-in-the-blank GPL, if feasible, that summarizes all unbundled services and their prices and lists the Rule's mandatory disclosures.¹⁸² One commenter also recommended "the inclusion of a 'safe harbor' provision for funeral homes" to incentivize funeral home compliance.¹⁸³

Three commenters argued against a standardized GPL.¹⁸⁴ The NFDA argued "a standardized price list is not needed [] to foster comparison shopping or to increase consumer comprehension" as "the only empirical evidence submitted on consumer understanding of price lists shows a very high comprehension level."¹⁸⁵ It further argued that it would be "impossible to design a standardized price list without limiting funeral options and innovation"—given the many different types of funeral homes in the country.¹⁸⁶ Alternative funeral provider Recompose argued "the goods and services offered in connection with all forms of disposition are not uniform such that [a standardized price list] would be practical, particularly when it comes to natural organic reduction."¹⁸⁷ The New Jersey State Funeral Directors Association argued a standardized GPL is "an overly prescriptive approach" that leaves little room "for adaption to individual funeral practices and ever-changing consumer changes, preference and trends."¹⁸⁸ It also argued a standardized GPL would create an undue hardship to funeral homes, because the "minimum out of pocket compliance cost for this change alone could cost NJ funeral providers up to \$364,000, not including labor, delivery and overhead."¹⁸⁹

2. Objectives and Alternatives

The Commission is interested in obtaining additional comment on how

¹⁸¹ C. Tregillus RR at 3–4 ("Such a prohibition would be essential for a standardized format price list that could facilitate comparison shopping for consumers, academic research and online third-party pricing guides that could consequently be kept up-to-date and accurate.").

¹⁸² Id. at 9.

¹⁸³ NYSFDA RR at 4.

¹⁸⁴ Recompose RR at 1–2; NJSFDA RR at 4–5; NFDA RR at 56–58.

¹⁸⁵ NFDA RR at 57 (citing an AARP commissioned Gallup poll in anticipation of the first review of the Funeral Rule which "reported that 92% of funeral consumers surveyed 'understood all of the terms on the price list used to describe the funeral service'").

¹⁸⁶ Id.

¹⁸⁷ Recompose RR at 1–2.

¹⁸⁸ NJSFDA RR at 4.

¹⁸⁹ Id. (suggesting instead that "standardization should be pursued at the state level as most price comparisons are conducted between providers located in the same state").

the itemized price lists could be improved to maximize consumers' access to accurate itemized price information in ways that minimize the burden on funeral providers, particularly small providers.¹⁹⁰ One alternative under consideration would require all information that must be included on the GPL—such as the required prices for 16 products and services (if offered) and all mandatory disclosures — to appear before any non-required information, such as details about packages or bundles, caterings, or cemeteries. Under another approach, the Rule would specify ways to make sure the mandatory disclosures are clear including requirements that they be in the same font, color, and size as the rest of the content in the price lists. One other option under consideration would require any price list posted online or conveyed electronically be in machine-readable format so third parties could collect and aggregate this information. Finally, even if the Commission declines to mandate a standardized form, it could issue new templates for the itemized price lists based on the input received on how to improve readability and consumer comprehension, as an optional tool for businesses to help them comply with the Rule.

G. Impact on People in Underserved Communities

The Commission is interested in receiving comment on the Rule's effect on the purchase of funeral goods and services in historically underserved communities.¹⁹¹ For example, do any of the Rule's provisions create hardships or benefits for consumers in low-income communities, those with limited or no English proficiency or from recent immigrant communities, or those living in communities of color? In another example, several programs exist that can help families of veterans and low-income consumers cover funeral expenses. The Commission is interested in knowing whether there are any particular issues or concerns related to the disclosure of price information when consumers make arrangements

¹⁹⁰ The Commission believes that the broad variety of products and services offered by funeral homes across the nation likely makes a fully standardized price list unfeasible.

¹⁹¹ Historically underserved communities include Black Americans, Latinos, Indigenous/Native American persons, Asian Americans/Pacific Islanders or other persons of color, members of religious minorities, lesbian, gay, bisexual, transgender, and/or queer persons, persons with disabilities, persons who live in rural areas, and persons adversely affected by persistent poverty or inequality.

using such benefits to cover some or all funeral costs.

H. Other Issues

The Rule Review elicited comments on a variety of other topics and concerns related to funeral goods and services. The Commission appreciates these comments and has carefully considered them, but is not inclined to consider proposals beyond those laid out in the prior sections. Nevertheless, the Commission will briefly respond to three additional topics discussed in the Rule Review comments.

1. Cemeteries

Many commenters, including consumer advocates, industry groups, and consumers, asked the FTC to expand the Rule to cover cemeteries.¹⁹² These commenters argued the factors that disadvantage consumers when dealing with funeral providers are also present during consumers' interactions with cemeteries,¹⁹³ and some cemetery operators are not transparent about their fees,¹⁹⁴ refuse to disclose prices on paper to consumers or researchers,¹⁹⁵ misrepresent legal and sales requirements,¹⁹⁶ and only offer bundled services.¹⁹⁷ Some commenters said

¹⁹² NFDA RR at 76–77; LRPCA RR at 1; FCA VABR RR at 1; FCA GKC RR at 1; FCA WMA RR at 2; FCA GR RR at 1–2; FCA ME RR at 1; FCA SC RR at 1; PMA RR at 1; FCA CTX RR at 1; CR RR at 4; FCA AZ RR at 4; FCA MN RR at 1; DC RR at 1; House Committee RR at 2; Charter Funerals RR at 1; UUFV RR at 2; Borderland RR at 2; SIFH RR at 11 n. 15; C. Reid RR at 4–7; M. Klein RR at 10; IN FDA RR at 3 (87% of its 144 licensed respondents "believed that including cemeteries in The Rule application was a logical progression in The Rule evolution"). See also FCA RR at 16–20 (asking the Commission to conduct an investigation into whether cemeteries should be regulated); J. Blackman RR at 13–14 (same). The New York Funeral Directors Association asked that the Rule's applicability be extended to all sellers of funeral goods or services, including cemeteries. NYSFDA RR at 2.

¹⁹³ FCA RR at 18–20.

¹⁹⁴ FCA ME RR at 1 (Prices are not available online for cemeteries); UUFV RR at 2 (same). Other complaints included difficulties transferring cemetery rights to other buyers, see Funeral Consumer Alliance of Houston RR at 1, and complaints concerning burying family members in the same mausoleum. See FCA GR RR at 2 (noting that "to tell a family member who just interred one parent in a mausoleum, the other parent would not be able to be placed in the same vault days after the interment is unconscionable and heartless").

¹⁹⁵ FCA RR at 18.

¹⁹⁶ Id. at 19; NFDA RR at 76–77 (1999 NFDA Membership survey found that "over 30% of the cemeteries imposed a fee whenever a consumer had chosen to purchase goods or services from a third-party").

¹⁹⁷ NFDA RR at 76–77 (1999 NFDA comments reported results of NFDA survey, composed of 3,436 response, found that "49.6% of the funeral homes reported that cemeteries in their areas required consumers to purchase goods and services only from the cemetery"); FCA RR at 18–20; E. Livshits RR at 1.

consumers are disadvantaged in their negotiations with cemeteries, “because deceased family members are already buried there,” which adds additional emotional hurdles.¹⁹⁸ Further, more than half of all funerals involve cemeteries,¹⁹⁹ and cemetery services are expensive.²⁰⁰ Amending the rule would allow consumers to compare prices “across the entire funeral service landscape,”²⁰¹ protect consumers from deception and manipulation,²⁰² and provide “a needed and long overdue level of fairness and marketplace equity to funeral firms, which are subject to the Rule’s provisions all while these other sellers are not.”²⁰³ Some of these commenters recognized the FTC may have jurisdictional challenges regulating not-for-profit cemeteries, but they argued Commission action would still be beneficial.²⁰⁴

Two commenters, the International Cemetery, Crematory, and Funeral Association (“ICCFA”), and Carriage Services, Inc. (“Carriage”), opposed regulating cemeteries under the Rule.²⁰⁵ They pointed out a large number of cemeteries are non-profits, which fall outside the scope of the Commission’s jurisdiction,²⁰⁶ and nothing has changed

in the cemetery industry since the Commission decided in 2008 to not regulate cemeteries under the Rule.²⁰⁷ ICCFA argued the data shows relatively few consumer complaints about cemetery issues,²⁰⁸ and “more and more states have developed their own internal process to report, review and also resolve cemetery issues.”²⁰⁹ Carriage also argued because cemeteries and funeral homes operate differently, it is not practical or necessary to expand the Rule to cemeteries.²¹⁰

In the 2008 Regulatory Review, the Commission declined to embark on a proceeding to expand the Rule to cover cemeteries because “the substantial portion of cemeteries that are not-for-profit entities [are] 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.”²¹¹

The Commission’s position on this issue remains the same. No evidence of changed circumstances has been submitted that would warrant a fresh look at this issue. The Commission encourages companies or individuals with knowledge of unfair or deceptive practices by cemeteries to submit a complaint with the Commission at reportfraud.ftc.gov.

2. The State Exemption

Some commenters urged the Commission to “re-open” the state exemption provision contained in Rule Section 453.9.²¹² Rule Section 453.9 allows a state agency to apply to the FTC for a state exemption from the Funeral Rule.²¹³ If the Commission determines (1) “there is a state requirement in effect which applies to any transaction to which this rule applies; and (2) that state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission’s rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the

State administers and enforces effectively the state requirement.”²¹⁴

The Commission does not believe any amendments to Rule Section 453.9 are necessary. States have had and continue to have an option to apply for an exemption to Section 453.9, if they are interested in doing so, and the Commission will evaluate all such applications.

3. The Funeral Rule Offender Program

Several commenters asked the FTC to either publish the names of all the funeral homes participating in the Funeral Rule Offender Program (FROP)²¹⁵ or drop the program entirely.²¹⁶ The “FROP allows funeral homes that have been found to be in violation of the Funeral Rule to attend educational courses offered by the NFDA instead of being subject to regulatory action.”²¹⁷ Critics of the FROP stated it “is unbalanced and unfair because it has little or no transparency for consumer complaints” and “consumers cannot really see who did what, and see the consequence.”²¹⁸ They also claim no evidence shows the FROP has improved compliance.²¹⁹ “In comparison, if the FTC published the names of violators, that would significantly increase the cost of a violation and likely persuade a much higher percentage of funeral homes to give compliance a much higher priority.”²²⁰

Others supported keeping the FROP.²²¹ These commenters said the FTC should have “an interest in encouraging voluntary compliance by offering compliance training to first offenders whose Rule violations may have resulted from inadequate training or inattention.”²²² They argued most participants in the FROP program “did not intentionally violate the Funeral Rule. In nearly every case, it was simply a case of employee carelessness or confusion.”²²³ And, commenters

²¹⁴ Id.

²¹⁵ CFA RR at 11–12; FCA WMA RR at 2; Funeral Consumers Alliance of North Texas (“FCA NTX”)—J. Bates RR at 1; FCA RR at 14–16; CR RR at 4; TINA RR at 4.

²¹⁶ FCA RR at 14–16.

²¹⁷ Id. at 14.

²¹⁸ FCA NTX—J. Bates RR at 1.

²¹⁹ Id.

²²⁰ CFA RR at 11–12. Some commenters noted that the fees paid to the FROP could provide a revenue stream that could be used for enforcement. FCA RR at 15. However, any civil penalty funds collected from FTC actions do not go into the FTC’s budget. Such funds go to the U.S. Treasury.

²²¹ C. Tregillus RR at 14; ICCFA RR at 24–25; NFDA RR at 74–75.

²²² C. Tregillus RR at 14; see also NFDA RR at 74–75 (“the point of the Program was education, not punishment”).

²²³ NFDA RR at 74–75.

¹⁹⁸ FCA RR at 17.

¹⁹⁹ Id. (“Though cremation recently passed the 50 percent mark, about 49 percent of households experiencing a death *have to do* business with a cemetery each year.”) (emphasis in original).

²⁰⁰ Id. (“Cemetery fees commonly add \$2,000 to \$3,000 to the final bill for the death of a loved one.”).

²⁰¹ NYSFDA RR at 2–3.

²⁰² PMA RR at 1–2.

²⁰³ NYSFDA RR at 1; see also SIFH RR at 11 n.

15. One commenter also noted that “[m]aking things more complicated is the existence of businesses that constitute a corporate-owned mega-portfolio of around 1,500 funeral homes and several hundred cemeteries. This means that funeral homes may have arrangements with certain cemeteries that enable businesses to include costs related to the cemetery as a package, enabling funeral businesses to still overcharge consumers by solely disclosing prices related to funeral homes while surreptitiously increasing cemetery-related costs. Moreover, with more and more families opting for cremation, cemeteries will have greater incentives to make up for losses by overpricing services and goods related to their services.” H. Lee RR at 4.

²⁰⁴ One said that “[a] robust rule in this regard for all cemeteries within its jurisdiction will aid the entire cemetery industry, non-profit, as well as for-profit, to undertake ‘best practices.’” UUFV RR at 2; see also C. Tregillus RR at 14–15 (encouraged the Commission to hold a workshop to “explore the possibility of developing voluntary industry-wide price list disclosure standards.”)

²⁰⁵ ICCFA RR at 26–29; Carriage RR at 3–4.

²⁰⁶ ICCFA RR at 27–28 (pointing out that there are over 9,000 reported 501(c)(3) cemeteries, as well as additional exempt religious or charitable cemeteries and that “some states still prohibit for-profit cemeteries, including Connecticut, Massachusetts, Maine, New Jersey and New York” (citing Conn. Gen. Stat. § 19a-296 (1959); Mass. Ann. Laws ch. 114, § 1A (2008); Me. Rev. Stat. Tit. 13, § 1303 (1937); New Jersey Cemetery Act, 2002, 2002 Bill

Text NJ A.B. 3048 (2002); N.Y. Not-for-Profit Corp. Law § 1501 (1977)); Carriage RR at 4.

²⁰⁷ ICCFA at 26.

²⁰⁸ Id. (noting that the “FTC Sentinel Report identified only 1,105 complaints in funeral service out of 3,200,000” and that ICCFA’s Cemetery Consumer Service Council only received 104 complaints in 2009, which led to the disbandment of the Council).

²⁰⁹ Id.; see also Carriage RR at 3–4.

²¹⁰ Carriage RR at 4.

²¹¹ 73 FR 13740, 13742–45 (Mar. 14, 2008).

²¹² NFDA RR at 41–42; ICCFA RR at 12–18; IFDA RR at 4; State FDAs RR at 1.

²¹³ 16 CFR 453.9.

contend, the program works: “Currently, there are 42 funeral homes in the FROP Program. . . . Of the several hundreds of funeral homes that have graduated from the Program over its 25 year history, NFDA has a record of only three of them subsequently being cited by the FTC for additional Funeral Rule violations.”²²⁴ Further, “[t]he program is a valuable resource for funeral providers, because without it, many smaller funeral providers could be put out of business with just one violation.”²²⁵

The Commission agreed to establish the FROP in 1996. The program has served the purpose of bringing into compliance with the Rule, through a compliance review and training, those funeral providers found in violation of the price disclosure provisions. Funeral providers in the program, many of whom are small businesses, make a voluntary payment to the U.S. Treasury²²⁶ and pay a fee to the NFDA that manages the program. These amounts are typically less than the maximum Civil Penalty amounts (currently up to \$46,517 per violation) set by statute for violations of the Funeral Rule.²²⁷ At the same time, the FROP allows the Commission to focus its limited resources on a broad test shopping program that has checked the compliance of thousands of providers through the years, and on business and consumer outreach and education efforts.

The Commission would like to thank all the commenters for their thoughtful feedback about the FROP. While the program is not codified in the Rule and therefore not officially a part of any proposed rulemaking, this feedback will help the Commission weigh the pros and cons of continuing the program, or potentially modifying it, as it re-assesses its enforcement program.

IV. Issues for Comment

The Commission invites members of the public to comment on any issues or concerns they believe are relevant to this ANPR. Commenters need not re-submit any comments submitted in response to the regulatory review issued February 14, 2020, as those comments are already part of the public record, but may submit additional comment, data,

²²⁴ Id.

²²⁵ ICCRFA RR at 24–25.

²²⁶ As a condition of entering FROP, the funeral provider must make a voluntary payment to the U.S. Treasury or a State Treasury in an amount equal to 0.8% of the funeral provider’s average gross annual sales revenue for the proceeding three years.

²²⁷ Federal courts have broad discretion in setting this penalty amount.

and information to provide input on the questions posed in this notice and solicitation. The public is welcome to provide comment related to any concerns they see in the marketplace and ideas for improving the Rule. At this time, however, the Commission is not inclined to consider issues beyond those it has requested comment on in the previous sections.²²⁸

In addition to the issues raised above, the Commission solicits comments on the following specific questions. For all questions, the Commission requests supporting data, information, and argument. It is particularly interested in evidence that quantifies the benefits and costs to consumers and businesses, including small businesses.

Online and Electronic Price Disclosure

1. Should the Rule be changed to require (a) all funeral providers (b) funeral providers that maintain websites or (c) funeral providers who sell funeral products or services online, to prominently display their GPLs, or a clearly labeled link to their GPLs, on their websites? If so, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Should the Rule specify how the GPL or the link to the GPL should be prominently displayed on the website? Why or why not, and, if so, how? Explain how your proposal would benefit consumers and minimize the costs to businesses, and provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

2. Should the Rule require (a) all funeral providers, (b) funeral providers that maintain a website, or (c) any funeral provider who shows pictures and/or descriptions of caskets, alternative containers, or outer burial containers on their website, to prominently display their CPLs and/or OBCPLs, or a clearly-labeled link to these documents, on their websites? If so, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

3. In the alternative or in addition to the proposed requirements in Questions 1 & 2, should the Rule require all

²²⁸ The Commission also encourages anyone with knowledge of unfair or deceptive practices by a particular company, to file a report at reportfraud.ftc.gov.

funeral providers that maintain a website to display a prominent statement on their website that the providers’ GPLs, CPLs, and OBCPLs can be requested and to include a link, button, email address, or other electronic mechanism for people to use to request the GPL, CPL, and/or OBCPL? If so, should the providers be required to respond to such requests within any particular time? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

4. Would a requirement that funeral providers send their GPLs, CPLs and/or OBCPLs to consumers via electronic means and format present any challenges or costs for compliance or present any benefits to consumers? If so, how could such challenges or costs be minimized while still providing benefits to consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

5. In addition to the proposed requirements in Questions 1 & 2, should a funeral provider that maintains a presence on social media be required to post the provider’s GPL and/or clearly-labeled links to the provider’s CPL and OBCPL on its social media account? Why or why not? If not, should a funeral provider be required to link its social media account to its main website if it has one, or, provide an email address or other online mechanism that will allow visitors to request the provider’s GPL, CPL, or OBCPL, and a statement that consumers can request the price lists, and should the funeral provider be required to respond to such requests within any particular time? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

6. In addition to the proposed requirements in Questions 1, 2, & 5, should the Rule contain other provisions that will embrace new platforms and technologies as they develop so that both providers and consumers can benefit from new distribution methods without requiring a Rule change? If so, how and what types of provisions would be most appropriate? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

7. Should the Rule mandate that funeral providers be required to post a

GPL, CPL, or OBCPL, or a clearly-labeled link to these documents, on any electronic, online, or virtual method or platform that it uses to post or otherwise make available information about its products or services, sell products or services, or communicate with customers or potential customers on a non-individual basis? If so, why, and how should the Rule define or otherwise explain when GPL, CPL, or OBCPL, or a clearly-labeled link to these documents, must be posted? Also, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

8. Would requiring a funeral provider to provide the price lists online (which could be defined to include a social media account or other electronic, online, or virtual method or platform) impose any challenges or costs for businesses, including small businesses, or provide any benefits to consumers? If so, how could such challenges or costs be minimized while still benefiting consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

9. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule require all funeral providers (with or without websites) to offer to send their GPLs, CPLs, or OBCPLs electronically to a person who asks about the providers' goods or services, or asks for a copy of any of the price lists? This would include requests by telephone, text, email, weblink, social media, fax, U.S. Mail, or other new communication methods that may emerge in the future. If so, should providers be required to send the information within a certain timeframe unless the person declines the offer, or does not provide an email address or other method for receiving the electronic information? In addition, should such a requirement contain an exception for funeral providers who posts their GPL, CPL, and OBCPL clearly and conspicuously on its websites? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

10. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule require all funeral providers to electronically

distribute their GPLs at the start of any arrangements discussion that is not in-person, unless a hard copy has already been provided? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

11. In the alternative or in addition to the proposed requirement in Question 10, should the Rule require that, if the consumer is making selections for a funeral arrangement online, then the provider would need to offer a prominent link to the GPL before allowing the consumer to proceed with selections? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

12. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, 6, 10, & 11, should distribution of electronic copies of the CPLs and OBCPLs also be required if discussing or showing those items in an arrangements discussion that is not in-person, or if the consumer is making selections concerning those items while shopping online? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

13. With respect to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule mandate how quickly funeral providers should be required to update the GPLs, CPLs, and OBCPLs posted on their websites, social media sites, or on other electronic sites? In support of your position, identify all costs that funeral providers incur each time they update the GPL, CPL, or OBCPL on their website. Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

14. Should funeral providers be required to send an electronic copy of the Itemized Statement of Funeral Services to people who do not meet with a funeral provider in person, such as persons making arrangements over the telephone, email, or online, before agreeing to services? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

15. Should any funeral providers be exempted from any of the proposed requirements described in Questions 1,

2, 5, & 6? Why or why not? If so, who are they, how many funeral providers would qualify for this exemption, and how would the exemption impact consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Crematory Fees and Additional Costs

16. Should all funeral providers be required to list third-party crematory fees in the description and price for direct cremation on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs and benefits to businesses, including small businesses.

17. Alternatively, should funeral providers that do not include the cost of third-party crematory fees in the price for direct cremation on the GPL be required to include a statement on the GPL in close proximity to the price for direct cremation that purchasers will be required to pay an additional third-party crematory fee and include a typical price range for the third-party crematory fee? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs and benefits to businesses, including small businesses.

18. Should all funeral providers be required to list additional items related to direct cremation or immediate burial not included in the price for direct cremation or immediate burial on the GPL? Why or why not? If so, which fees should be required to be disclosed? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

19. In addition to the proposed requirements in Question 18, should funeral providers be required to include such items in close proximity to the price for direct cremation or immediate burial? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs to businesses, including small businesses.

20. In the alternative to the proposed requirements in Question 18 & 19, should all funeral providers be required to list on the GPL in close proximity to the cost for direct cremation and immediate burial a statement listing additional fees that the funeral home knows consumers may incur when they select a direct cremation or immediate burial and the typical price range of such fees, if such fees are not included in the price for direct cremation or immediate burial? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

21. In the alternative to proposed requirements in Questions 18, 19 & 20, should funeral providers be required to include a statement in close proximity to the price for direct cremation or direct burial on the GPL that says that additional fees may apply? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the burdens and benefits to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

Reduced Basic Fee Services

22. Should the Rule be amended to clarify when funeral providers may charge a reduced basic services fee? Should the definition of direct cremation and immediate burial in the Rule be amended to allow those offerings to include limited viewings, limited visitations, or another other services? Why or why not? If so, what limited viewing, limited visitations, or other services should qualify for the reduced basic services fee under this definition? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Alternative Forms of Disposition

23. Should the Rule language be amended to specifically address alternative forms of disposition, including alkaline hydrolysis and natural organic reduction? Why or why not? If so, how should the Rule address these services? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

24. Should the Rule be amended to state that providers of alternative forms

of disposition, such as alkaline hydrolysis and natural organic reduction, could offer direct or immediate services with a reduced basic services fee? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

25. Should the Rule be updated to provide exceptions for the requirements to provide alternative containers and disclosures related to alternative containers for funeral service providers using new methods of disposition or direct disposition that do not require a container? Why or why not? If so, how should the Rule be amended to allow such exceptions? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

26. Should additional disclosure language relating to alternative forms of dispositions be added to the Rule? If so, what should the disclosure say? How would the additional disclosure language impact the overall consumer experience or create any benefits or costs to consumers and businesses, including small businesses?

27. Are there provisions of the Rule that are in tension with alternative forms of disposition? If so, what are those provisions, and how are they in tension with alternative forms of disposition? Provide all evidence that supports your answer and explain whether and how the tension between the Rule and alternative forms of disposition creates costs for consumers and businesses, including small businesses.

Embalming Disclosure

28. Should the embalming disclosure contained in section 453.3(a)(2)(ii) of the Rule be amended to ensure consumers understand the specific circumstances in which embalming may be required under state law? If so, how should the disclosure be updated? Identify any surveys, studies, or other evidence that supports your position.

29. Should the Rule be amended to modify the disclosures about embalming to require providers to state on the GPL the correct law for the jurisdictions in which it operates, as follows: If the provider operates in a state that never requires embalming by law, the provider must state: "Embalming is not required by law in (name of state)." If the provider operates in a state that requires embalming by law under certain circumstances, the provider must state those circumstances: "Embalming is

required in (name of state) when (list the state's legal requirement)." If the provider operates in multiple states with different requirements for embalming, the provider would list the requirements for each state in which the provider operates. Why or why not? Identify any surveys, studies, or other evidence that supports your position.

30. Should a funeral provider be required to disclose its policy regarding embalming on the GPL in close proximity to its description and price for embalming services? In addition or in the alternative, should a funeral provider be required to inform consumers that it does not possess refrigeration facilities, which may limit a consumer's options to avoid embalming under state law, or add fees related to third-party refrigeration facilities, in close proximity to its description and price for embalming services? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

31. Should funeral providers that do not offer embalming services to any customers, due to their religious traditions or for other reasons, be required to include an embalming disclosure on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Price List Readability

32. Should the GPL, CPL, and/or OBCPL requirements be changed to improve readability for consumers? If so, what changes could be made to the format that would make the documents easier for consumers to comprehend and for businesses to know they have complied with the Rule? Also, state whether your proposed changes would add additional disclosure requirements to the Rule. If so, how would the additional disclosure language impact the overall consumer experience and describe any benefits or costs associated with these disclosures. Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses, and all surveys, studies, or other evidence that supports your position.

33. Should the Rule provide more specific requirements to ensure that the mandatory disclosures are clear and

conspicuous? If so, how and why? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses, and all surveys, studies, or other evidence that supports your position.

34. Should the Rule be changed to require that the information required to be included on the GPL, such as the prices for the 16 products and services (if offered) and the mandatory disclosures, be placed before other content (such as packages) on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

35. Should the Rule be changed to require that the mandatory disclosures on the price lists be in the same font, color, and size as the rest of the content on the price lists? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

36. Should the Rule require that the GPL, CPL, and OBCPL be in machine-readable format? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Impact on People in Underserved Communities

37. Are there any funeral provider practices that disproportionately target or affect certain groups, including lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer, including any evidence that quantifies the impacts upon affected consumers and communities, and the impacts to businesses, including small businesses and businesses owned and operated by members of historically underserved communities.

38. Should any of the provisions of the Funeral Rule be amended to avoid disproportionately impacting or affecting certain groups, including people living in lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses and businesses owned

and operated by members of historically underserved communities.

39. Are there any special issues or concerns related to the disclosure of price information when consumers use benefits provided by programs to help families of veterans and low-income consumers cover funeral expenses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

40. Are there circumstances in which funeral providers should be required to make price lists, disclosures, and statements of services selected available in languages other than English? For instance, should funeral providers be required to provide itemized price lists in any language they use for advertising, or in any language they use to make funeral arrangements? What would be the effect of such a requirement, and what costs and benefits would it entail?

V. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 3, 2023. Write “Funeral Rule ANPR, Project No. P034410” on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of public health protections and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form. If you file your comment on paper, write “Funeral Rule ANPR, Project No. P034410” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website, <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information such as your or anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country

equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing 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 it receives on or before January 3, 2023. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

VI. Public Workshop

The Commission seeks the broadest participation by the affected interests in the rulemaking. To that end, the Commission will host a public workshop to hear from the public about these issues and discuss possible

amendments. Staff will announce more details about the workshop soon.

By direction of the Commission.

April J. Tabor,
Secretary.

Note: the following statements will not appear in the Code of Federal Regulations.

Statement of Chair Lina M. Khan

People are at their most vulnerable when they're grieving. That was the insight behind the FTC's Funeral Rule, which first took effect in 1984. The goal was to prevent consumers from being taken advantage of during moments of deep grief and loss. Among other provisions, the Rule requires funeral homes to provide a clear list of prices for goods and services offered. This helps family members make informed decisions and avoid paying for things they don't need.

One challenge is that the Funeral Rule was crafted before the internet age, so it only applies in person or over the phone. Even though Americans today typically begin their shopping online, funeral providers are not required to list prices on their websites. The staff report that the Commission is voting on today found that just under 25 percent of funeral home websites provided a full list of prices. Over sixty percent provided little to no price information whatsoever. Stories persist about consumers spending hours trying to answer the most basic questions about how much it will cost to bury their loved ones.¹ In the internet era, it's hard to see why anyone should have to physically visit or call multiple funeral homes just to compare prices.

Today's advance notice of proposed rulemaking seeks comment on several concrete ways to modernize the Funeral Rule. This includes asking whether the Rule should require funeral providers to provide pricing information online or via email, which could help consumers make informed decisions during some of the most difficult moments of their lives. It could also better incentivize funeral homes to offer the most competitive prices. This would ultimately lower the expensive burden of putting a loved one to rest.²

¹ Robert Benincasa, *Despite Decades-Old Law, Funeral Prices Are Still Unclear*, NPR (Feb. 8, 2017), <https://www.npr.org/2017/02/08/504031472/despite-decades-old-law-funeral-prices-are-still-unclear>.

² See, e.g., Joshua Slocum, *Death with Dignity? A Report on SCI/Dignity Memorial High Prices and Refusal to Disclose These Prices*, Funeral Consumers Alliance & Consumer Fed'n of America (Mar. 2017), <https://funerals.org/wp-content/uploads/2017/03/3-6-17-Funeral-SCI-Report.pdf>; Joshua Slocum & Stephen Brobeck, *The Relationship Between Funeral Price Disclosures and*

I am pleased to support this effort, and I look forward to the public comments during our rulemaking proceeding. I'd like to thank our staff for their excellent work on this matter.

Statement of Commissioner Rebecca Kelly Slaughter

Funerals are not only emotionally overwhelming, they are also financially overwhelming. The average cost of a funeral in 2022 is \$7,360 and has risen over 6.6 percent over the past five years.¹ These costs don't include end-of-life care or the thousands of additional dollars required for a cemetery plot and headstone. Not only is this a staggering amount of money for most consumers to cover—it is a purchase that they have to make under incredible stress. Grieving, rushed, distracted and unprepared, consumers seeking funeral services are in little position to negotiate. The FTC Funeral Industry Practices Rule requires that funeral providers share written pricing information when consumers inquire in person. The Rule also requires that providers provide accurate price information to consumers who call them. But in its current form, the Funeral Rule does not require funeral providers to publish pricing information online. This framework can make planning and price comparison challenging under any circumstance, but I can't imagine how hard this was for the hundreds of thousands of consumers who had to navigate making funeral arrangements during the height of the pandemic. In early 2020, the Commission initiated a routine review of the Rule, which generated 785 comments. I've reviewed many submissions in which consumers described how difficult it was to make funeral arrangement for loved ones who lived far away or how ill-equipped they were to negotiate or make choices at the height of their grief.² I want to share an

Funeral Prices: A California Case Study, Consumer Fed'n of America (Feb. 2020), <https://consumerfed.org/wp-content/uploads/2020/02/California-Funeral-Home-Pricing-Report.pdf>.

¹ 17 Mind-Boggling Funeral Cost Statistics in 2022 & Beyond, Kelly Maxwell, Seniors Mutual, <https://seniorsmutual.com/funeral-cost-breakdown/>.

² See, e.g., FTC-2020-0014-0406 Comment Submitted by John J. Wilson ("[M]y mother who lived alone in a retirement home in Phoenix, Arizona passed away and since I live in Austin, Texas, this required me to make funeral arrangements in a distant city that I was not familiar with. Without the funeral price list online this made my task much more difficult. In fact, I feel I was at the mercy of the funeral provider. Without having knowledge of their prices in advance, I felt that they could charge me whatever amount they desired and I was defenseless. They had me over a barrel, so to speak. I'm sure I paid much more than necessary for my mother's funeral arrangements. If I had had their price list before

excerpt from one commenter's powerful description of his excruciating experience trying to make arrangements for his young son without online pricing information:

In many, if not most cases, death comes suddenly and is unexpected. This leaves the loved ones of the deceased little time to prepare for the viewing and burial.

This was true for my family with the death of our 4-year-old son. While we had been provided a terminal cancer diagnosis for many months for my oldest son, I could not bring myself to begin planning for his funeral. I had limited time to spend with him outside of work, I did not think it made sense to invest any of it shopping for funeral services.

When the end came for him, and it was sudden, we were forced to decide between two funeral homes in our town. We chose the largest one because we expected a large crowd to attend. I had no idea what to expect when I arrived to discuss arrangements, so you can imagine my surprise when I learned the cost involved. Online pricing would have allowed me to prepare in advance and to prepare to negotiate what was by far the largest purchase I've ever made without any advance notice. I could have spent nights reviewing the cost without feeling guilty about leaving my son and the limited time we had together.

I had a crushing level of grief when I walked into that funeral home and I had absolutely no way to negotiate when they handed me their proposed price. How is that fair? They already had possession of my son's body, so it was not like I could walk out and begin shopping.

To place this in context, I believe my first car, that I purchased in 1998, cost less than his burial and I knew exactly what that would cost because I had the internet available to me. I could arrange for financing from the bank before I ever bought the car so I knew how much it would cost each month and when I would make the final payment. I felt completely prepared to purchase my car and I was very comfortable when I walked into the dealership to finalize the purchase

There is no logical reason not to allow for online pricing except to suppress consumer awareness. . . . Government's job is to protect their citizens and this is one instance when we need protecting because emotionally compromised consumers are being taken advantage and we have no way of preventing it.³

I want to thank this father and all the commenters to the 2020 rule review

visiting the funeral provider, I would have been in a much better bargaining position, but unfortunately this was not the case."); FTC-2020-0014-0637 Comment Submitted by Elizabeth Menkin ("When my mother died, it was impossible to collect price lists for any cost-comparison survey at the time that we needed to make arrangements. I had to individually contact funeral homes and hope they would voluntarily email/mail a price list. I would have had to drive to funeral homes who refused. This is a terribly burdensome task to impose on a grieving family.').

³ FTC-2020-0014-0685 Comment Submitted by Adam Drapczuk III.

who shared their views and experiences and I whole-heartedly support the FTC's publication of the advance notice of proposed rulemaking asking specific questions about whether and how to modernize the Funeral Rule to better protect consumers trying to make a huge purchase under the worst circumstances. I encourage all consumers and other stakeholders to weigh in on the questions posed by the ANPR.

[FR Doc. 2022-23832 Filed 11-1-22; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 80

[Docket No. FDA-2022-N-1635]

RIN 0910-A169

Color Additive Certification; Increase in Fees for Certification Services

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to amend the color additive regulation to increase the fee for certification services. The change in fees will allow FDA to continue to maintain an adequate color certification program as required by the Federal Food, Drug, and Cosmetic Act (FD&C Act). The fees are intended to recover the full costs of operation of FDA's color certification program.

DATES: Either electronic or written comments on the proposed rule must be submitted by January 3, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2022-N-1635 for "Color Additive Certification; Increase in Fees for Certification Services." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed

confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Bryan Bowes, Office of Cosmetics and Colors (HFS-105), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1122; or Carrol Bascus, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS-024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION:

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