Proposed 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, rplet@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. 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. 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. 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; (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; or (3) embalm the deceased for embalming is not required by law. 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. 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 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. Second, the Rule requires funeral providers to show persons inquiring about 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. 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.” 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.

II. Regulatory Review of the Funeral Rule

On February 14, 2020, the Commission initiated a review of the Rule. The Commission solicited comments on, among other things: (1)
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. The vast majority (689 comments) came from individuals. Most commenters expressed support for the Rule. Commenters credited the Rule with improving consumers’ ability to make informed decisions. Two associations stated that the Rule facilitates consumer choice. Another commented that the Rule “level[s] the playing field” for funeral providers, protects consumers from bad actors, and “serves as an enforcement mechanism.” 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.

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.” 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, 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 economic 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.

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. 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.

As discussed in more detail herein, the Rule Review comments indicated that consumers have changed how they shop and obtain price information, and some funeral providers have started selling or advertising their services and goods online. 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. 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. 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

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

16 See, e.g., New York State Funeral Directors Association (“NYSFDA”) RR at 2; International Cemetery, Cremation and Funeral Association (“ICFCA”) RR at 7; 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. Barceroo 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).

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

18 SIFH RR at 5; ICFCA RR at 5.

19 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; ICFCA 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).

20 The Commission appreciates the commenters’ submissions. All of the Rule Review comments are noticed and are part of the record.
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 experience with planning funerals,29 and the need to quickly make decisions about what to do with a dead body 30—“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, phone, fax, over the phone, or by using the contact form on the provider’s website.33

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”) and the National Funeral Directors Association of California—Advisory Committee for Cemetery & Funeral Bureau, Dept of Consumer Affairs, CA—J. Okiy 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. Gannon (“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 Services of the Finger Lakes—W. Sinclair RR at 1; Funeral Consumers Alliance of Princeton—N. McCarty ("FCAFM") at 1; FCA CT RR at 1; Chicago Consumer Coalition (“CCC”)—D. McCarty RR at 3–9; CC RR at 3; Consumer Reports ("CR RR") at 2–3; FCA AZ RR at 1–2; Funeral Consumers Alliance of Minnesota ("FCA MN") RR at 1; Texas Appleseed RR at 1; Balance for Life and Death—Neirda 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—Sussan Mackey ("OBPP") 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; Homestates Life Co.—M. Lacey ("HLC") RR at 1; On the Record Advance Planning—A. Prakasa ("OTR") RR at 1; Givens Estates, Inc. and FCA of North Carolina—J. Askey ("Givens Estate") RR at 1; UUFPV RR at 1; Borderland, a Community Ministry in Knoxville, TN—J. Arthur ("Borderland") RR at 1; Burmese American Buddhist Corp.—T. Timm RR at 1; Diversity Collaborative—L. Luardo ("DC") RR at 1; Morristown Beard School—J. Farhat ("MBS") RR at 1; Kansas City Hospice & Palliative Care—R. Valdivino RR at 1; S. Dela Valle RR at 1 (funeral home can be found only 12 miles away from the provider’s residence); J. Ivey 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/ ("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.

29 For example, the Funeral Consumer Alliance of Utah noted that “[i]n hospitals, when death occurs, families are ordered to call a 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 [funeral] planning.’” 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 (funeral planning) or undergone an in-depth awareness on ‘Consumer Awareness and Preferences Study,’ National Funeral Directors Association (Apr. 2019), at 8.)

30 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 coerced 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 family to get a larger sale by saying things like “your husband deserved better than that”).

31 FCA RR at 2; see also MSGA 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 News 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 reductions. FCA 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)).

32 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 the past few years are 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 News 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 reductions. FCA 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)).

Commentators also reported many funeral providers do not make their price lists available online, even if they have a website or other online presence. 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 all CC RR at 1 (that their CNN 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 general hospitals had 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 ‘never’ show up. ‘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 return phone calls within a few weeks 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 were often easier to spot 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, 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 stated, if the 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 "[d]ocument the funeral director's head 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 list.");

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 least likely to opt out of putting their pricing online); Texas Appleseed 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, only one or two post their price list on their website."); UUFPV 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, including emotionally distraught families.38 families who live in different states,39 the disabled, ill and homebound elderly consumers,40 those lacking access to transportation,41 and rural consumers, who often have to drive long distances to reach the nearest funeral home.42 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 at all [online].43 Robertson RR at 1 (describing how out of state relatives had to step in to help grieving niece plan a funeral); S. Allegre RR at 1 (discussing the inter- family members when they had to help 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 with 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 CTT RR at 1; C.CC RR at 1 ("Those facing death and the decisions 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 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. Grilling RR at 1 ("I 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 "ease[e] the emotional and financial stress involved in making needed funeral arrangements"); W. Wilson RR at 1 (describing difficulties in arranging for his mother and explaining that an online price list would have made things much easier); see also FCA RR at 3, citing HwaJung 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 buy a 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 (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 (a long-time Alzheimer's hearing issues reported that "[d]riving some places or making several phone calls does not work for us").

42 M. Scrudera RR at 1; N. Leyden-Morri 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).

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 consumers to shop around and 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

46 FCA 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 searches compare online price") and Jansen, Morgegonzalez, Wildenbeest, “Consumer Search and Pricing Behavior in internet Markets" (online 2009) (consumers especially compare online prices when products are expensive); OTR RR at 1 ("according to Online Shopping Statistics You Need to Know in 2020 (article by Maryam Mohsin on Oberlo dated 30 Oct 2020), 63% of shopping occasions begin online.").

47 CFA RR at 7–8; OBFP RR at 1; Imperial Caskets RB at 1; Funerea RR at 1; LRCPA RR at 1; CA RR at 1; FCA NC RR at 1; FCA EMA RR at 1; PMA RR at 1; CCC RR at 1; House Committee RR at 1; TINA RR at 2 n. 12.

48 FCA RR at 7–8; OBFP RR at 1; Imperial Caskets RB at 1; Funerea RR at 1; LRCPA RR at 1; CA RR at 1; FCA NC RR at 1; FCA EMA RR at 1; PMA RR at 1; CCC RR at 1; House Committee RR at 1; TINA RR at 2 n. 12.

49 CFA RR at 10 (a 2017 CFA-commissioned survey of American adults in 2017 found that 79% of respondents agreed that “[i]f the funeral home has a website, should it also be required to make this information available online?"").
consumers to meaningfully price shop and view the Rule’s mandatory disclosures earlier in the process. And some that online posting could lead to more price competition among funeral providers. 

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. 

Supporters of this view noted that the cost to these funeral providers would be minimal. 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 [price] list information on that social media service.”

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. Some commenters asserted funeral providers without a website should have to promptly email itemized price lists in response to consumer requests. Others argued that online delivery was not an acceptable substitute, because email would often be too slow for the time sensitive decisions at issue, and requiring funeral homes to respond to emails in a timely fashion could be too burdensome given that at least some homes have only a handful of employees.

Some commenters noted the collection of email addresses by a funeral provider could raise privacy and spam concerns. 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, so as requiring “online GPLs be updated in a reasonable timeframe when prices change”—so consumers are not misled by out of date prices.

Similarly, when prices change”—so consumers are not misled by out of date prices.61

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61 AARP RR at 2. But see K. Kaczmarek RR at 3, noting that “price-hiders charged a median price 37 percent higher for a direct cremation ($1,605) 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 disclosures ($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 disclosures ($1,348”).

62 See, e.g., UUFV RR at 1; FCA RR at 9; AG RR at 9; CFA 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.

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 1; S. Della Valle RR at 1. 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 &
they point to third-party online services that collate funeral price information and offer it to the public.66 Some commenters argued most consumers are satisfied with the current status quo 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

Cemetery Association, and the Arizona Funeral Cemetery & Cremation Association (the "State FDAs."). The FDAs argue that requiring funeral providers to disclose online prices for all services and packages involves substantial costs that providers should not be required to bear. For example, one commenter noted, however, that this would involve substantial initial and ongoing costs.”; Funeralocity RR at 3.

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 over 10% of consumers seek price information, 65.4% do it by visiting 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 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” 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,

According to the NFDA’s Consumer Survey, 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 6,200 deaths per month in NJ (74,159 deaths/12 months = an average of 6,160 deaths each month.).”); NYS FDA RR at 3 (“While empirical data show that this medium still lags as an option for consumers in obtaining funeral price 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.funnelprices.com (last visited June 9, 2020); Consolidated Funeral Services, https://runcfs.com (last visited June 9, 2020); and Frazier Consultants, https://www.frazierconsultants.com (last visited June 9, 2020).

NFDA RR at 11; see also NFDA RR at 50. One service, Funeralocity, commented 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 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.”64 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/provider conflict.” NFSDFA RR at 3.

NFDA RR at 46 (NFDA’s 2019 and 2020 funeral surveys showed that 19.54% of consumers found it to be easy to obtain price information, 34.9% found it to be 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).

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 the website, it takes away the business’ right to choose where it conducts business.")."

NFDA RR at 10–11, 49. As one funeral provider said, “Price simply does not tell the story” of what the funeral can do and need to be coupled with other services, in order to best assist families in making a difficult decision.” NFDA RR at 49.

NFDA RR at 3 (“Indeed, there is also infinite value for a consumer to speak with a funeral 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.”).

ICCFRA 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 companies that specialize in this and certain small providers may not be able to do.”).

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

ICCFRA 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 new, potentially, all shopping would be done online.").

ICCFRA 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 have noUPDATE references, books and materials on the current Funeral Rule and to states which would have to update its testing materials. Id.

OTR RR at 15–16. But see OTR RR at 1 (noting that Texas exercises minimal oversight over the funeral industry).

NFDA RR at 47; State FDAs RR at 1. See also ICCFRA RR at 20 ("[1]other 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 commentators 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, telephone, or by posting a link to its GPL on the funeral home’s website with the word[s] ‘price information.’”83 Third, one commenter 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 GPL or other price information on their website’s homepage 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.

Commission staff has historically conducted such shopping as part of its efforts to ensure compliance with the Rule.91 NFSDFA RR at 4 (FTC undercover price shoppers should not target funeral providers who have GPLs conspicuously disclosed on the website); NYSDFA 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 NYSDFA also asked that the FTC allow “adequate time” of one year before implementing any website disclosures, to give the industry time to comply. NYSDFA RR at 3–4.

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.

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.
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. The current Rule requires funeral providers to present their CPLs and OBCPLs before discussing or showing these items or pictures of these items. 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. 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, in 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.”

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 CPLs, 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 future. 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.

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.

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 of retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. 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

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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)(ii)(I). 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 The Rule currently requires 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.

96 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.

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98 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.
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 fees for certain 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. 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.

1. Summary of Comments

Several commenters asked that the Rule be changed to require funeral providers to disclose all cremation fees on the GPL, including third party crematory fees, as well as any additional crematory-related fees such as crematory transportation fees. These commenters argued it is deceptive not to include these additional fees on the GPL when listing the price for cremation services. The 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, and may not learn until it is time to pay the bill they also have to pay additional third party crematory fees.

According to these commenters, while most funeral homes appear to voluntarily disclose all third party cremation fees on their GPL, a substantial minority do not. 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. 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.” Commenters reported third party crematory fees can range from $250 to $600.

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

Some commenters were opposed to amending the GPL requirement to require the disclosure of third party crematory fees on the GPL. Some commented that over 70% of funeral providers use a third party crematory to perform their cremations, and these funeral providers have no control over the amount charged by third party crematories. Some commenters reported many funeral providers work with multiple crematories that charge different fees, 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 change.

2. Objectives and Alternatives

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

100 16 CFR 453.2(b)(4).
102 CFA RR at 10–11; LRC PA 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, Graceful 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 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 cremation 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 these 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.

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 competitor—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 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


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.

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 to prevent "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 advocacy group asserted funeral providers provide a "true service", and the basic services fee "support[s] the continued health of 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 those 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 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.

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," but does not mention whether newer techniques for disposition of human remains, such as alkaline hydrolysis and natural organic reduction, 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...
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.” 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. 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.

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 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.”

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.

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 “except 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.

1. Summary of Comments

Several commenters asked the Commission to clarify the embalming disclosure, although they disagreed on how it should be clarified. 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. 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.” When consumers “are told by a funeral home that they will not permit viewing without embalming,” consumers mistakenly assume this embalming is mandated by law and the “only way to avoid embalming is to choose direct cremation or immediate burial.” 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.

The NFDA agreed the embalming disclosure should be amended, but for different reasons. 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.” To the NFDA, the current disclaimer is misleading “in that it implies to the consumer that embalming is rarely required by law.” 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.”

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.” 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...
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 should 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, as well as several mandatory disclosures and placement requirements for those disclosures. 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. Many argued the price lists are confusing to read, often “lack important information on some fees,” 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.

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.” 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.

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, 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.” 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, and benefit businesses, by providing certainty and lowering compliance risks. Other commenters agreed and argued a standardized itemized price list, if done “with the appropriate level of clarity. . . . [will] significantly facilitate funeral home compliance,” minimize consumer confusion, make it easier for consumers to compare prices between funeral homes, and encourage the information more easily available through the use of accessibility devices.

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, creating a standard, machine-readable document, which would “make the information more easily available through the use of accessibility devices,” and mandating that “the list should begin with clear and prominent introductory statements.” Others commented the GPL should be ”organized in a consumer-friendly way” or with a “plain English explanation of its contents,” that the mandatory disclosures should appear on the GPL before other goods, services, or packages.

The Rule should mandate that the GPL not contain any

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 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, TINA comments among funeral homes difficult at best, even when consumers shop and plan in advance of need . . . ."); M. Klein RR at 5–6.
166 AG RR at 4.
167 TINA RR at 4; FCA RR at 14.
168 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."); AG RR at 4; FCA RR at 14; see also TINA RR at 4.
169 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.").
information not expressly required or permitted by the Rule,183 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 optative 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 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, catering, 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 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 consumer 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

183 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.”).
184 Id. at 9.
185 NYSFDA RR at 4.
186 Recompose RR at 1–2; NJSFDA RR at 4–5; NFDA RR at 56–58.
187 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’”).
188 Id.
189 Recompose RR at 1–2.
189 NYSFDA 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”).
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.
192 NFDA RR at 76–77; LRPCA RR at 1; FCA KBR RR at 1; FCA GKR 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 A2 RR at 4; FCA MN RR at 1; DC RR at 1; House Committee RR at 2; Charter Funerals RR at 1; UU芙V 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); 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); UU芙V 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.
in the cemetery industry since the Commission decided in 2008 to not regulate cemeteries under the Rule.\textsuperscript{207} ICCFA argued the data shows relatively few consumer complaints about cemetery issues,\textsuperscript{208} and “more and more states have developed their own internal process to report, review and also resolve cemetery issues.”\textsuperscript{209} Carriage also argued because cemeteries and funeral homes operate differently, it is not practical or necessary to expand the Rule to cemeteries.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{212} Rule Section 453.9 allows a state agency to apply to the FTC for a state exemption from the Funeral Rule.\textsuperscript{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.”\textsuperscript{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)\textsuperscript{215} or drop the program entirely.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{218} They also claim no evidence shows the FROP has improved compliance.\textsuperscript{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.”\textsuperscript{220}

Others supported keeping the FROP.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{223} And, commenters
content, 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. Treasury 226 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 resubmit 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, 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 OBGPLs, 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 funeral providers that maintain a website to display a prominent statement on their website that the providers’ GPLs, CPLs, and OBGPLs 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 OBGPL? 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 OBGPLs 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 OBGPL 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 OBGPL, 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...
1. 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.

2. Should funeral providers be required to include a statement on the GPL 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.

3. Should 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 costs and benefits to businesses, including small businesses.

4. Should funeral providers be required to list 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 and benefits to businesses, including small businesses.

5. Should 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.

6. Alternative, should 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 to consumers, and the costs to businesses, including small businesses.

7. In the alternative or in addition 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.

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 consumers, 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 post 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 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.

16. Alternative, should 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.

17. 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 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 costs and benefits to businesses, including small businesses.

19. In the alternative or 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 and benefits 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.

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.

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.

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: “Embalmers is not required by law in (name of state).” If the provider operates in a state that requires embalming by law, the provider must state: “Embalmers 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.

32. Should the GPL, CPL, and/or OBGPL 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
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 in 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 “[trade 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 on 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.

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 whatsoever. Stories persist about consumers spending hours trying to answer the most basic questions about


Refusal to Disclose These Prices, Refusal to Disclose These Prices, Refusal to Disclose These Prices, 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.”).

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

...
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:


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