

FEDERAL TRADE COMMISSION

16 CFR Part 453

RIN: 3084-AB55

Public Workshop Examining Potential Amendments to the Funeral Rule

AGENCY: Federal Trade Commission.

ACTION: Public workshop; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) will hold an in-person public workshop relating to its November 2, 2022, advance notice of proposed rulemaking (“2022 ANPR”) on the Trade Regulation Rule entitled the “Funeral Industry Practices Rule” (“Funeral Rule” or “Rule”). The workshop will explore issues relating to the Funeral Rule’s General Price List (“GPL”) requirements, including whether and how funeral providers should be required to provide price lists electronically or online, and other issues raised in the comments received in response to the 2022 ANPR.

DATES: The public workshop will be held on September 7, 2023, from 9:30am until 3:30pm at the Constitution Center Conference Center, located at 400 7th Street SW, Washington, DC 20024. The workshop will also be available for viewing via live webcast. Requests to participate as a panelist must be received by June 19, 2023. Any written comments related to the issues discussed at the workshop must be received by October 10, 2023.

ADDRESSES: Interested parties may file a comment or a request to participate as a panelist online or on paper, by following the instructions in the Filing Comments and Requests to Participate as a Panelist part (Section IV) of the **SUPPLEMENTARY INFORMATION** section below. Write “Funeral Rule Workshop, Project No. P034410” on your comment or

request to participate as a panelist. File your comment through <https://www.regulations.gov>. File your request to participate as a panelist by email to: funeralrule@ftc.gov. If you prefer to file your comment or request to participate on paper, write “Funeral Rule Workshop, Project No. P034410” on your comment or request to participate, and on the envelope, and mail your comment or request to participate to the Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex F), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Melissa Dickey, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2662; and Samantha Denny, Midwest Region, Federal Trade Commission, 230 S. Dearborn, Suite 3030, Chicago, IL 60604, (312) 960-5623.

SUPPLEMENTARY INFORMATION:

I. Introduction

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

¹ Portions of the Rule became effective on January 1, 1984, and others became effective on April 30, 1984. *See* 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984). Several funeral providers challenged the Rule, but it was upheld by the Fourth Circuit. *Harry and Bryant Co. v. FTC*, 726 F.2d 993 (4th Cir. 1984), *cert. denied*, 469 U.S. 820 (1984). The Rule was amended on July 19, 1994 (59 FR 1592 (Jan. 11, 1994)), and the Third Circuit upheld the amended Rule following a challenge. *See Pennsylvania Funeral Directors Ass’n, Inc. v. FTC*, 41 F.3d 81, 83 (3rd Cir. 1994). On March 14, 2008, the Commission completed a regulatory review and concluded the Rule was still needed and should be retained. *See* 73 FR 13740, 13742 (Mar. 14, 2008).

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

and services they do not want and are not required to purchase by law; and (3) misrepresentations are not used to influence consumers' decisions.³

Among other things, the Rule specifies it is an unfair or deceptive act or practice for a funeral provider to: (1) fail to furnish accurate price information to the purchaser disclosing the cost for each of the specific funeral goods or services used in connection with the disposition of deceased human remains;⁴ (2) condition the furnishing of any funeral good or funeral service upon the purchase of any other funeral good or funeral service, or charge a fee as a condition for furnishing any goods or services (*e.g.*, a “casket handling” fee to consumers who provide their own casket);⁵ or (3) embalm the deceased for a fee without authorization when embalming is not required by law.⁶ The Rule also specifies it is an unfair or deceptive act or practice for a funeral provider to misrepresent certain legal or cemetery requirements, including those for embalming, caskets or burial containers, or any other funeral good or service.⁷

The Rule sets forth preventative requirements in the form of itemized price and information disclosures to ensure funeral providers do not engage in the unfair or deceptive acts or practices described in the foregoing paragraph. First, the Rule requires funeral providers to provide persons inquiring in-person about funeral goods or services with a GPL, which lists the goods and services they offer and their itemized prices, along with specific disclosures.⁸ Second, the Rule requires funeral providers to show persons inquiring in-person a Casket Price List (“CPL”) identifying the caskets and alternative containers they offer, and an Outer Burial Container Price List (“OBCPL”) listing the vaults and grave liners they offer, along with specific

³ *See id.*

⁴ 16 CFR 453.2(a).

⁵ 16 CFR 453.4(b)(1).

⁶ 16 CFR 453.5(a).

⁷ *See* 16 CFR 453.3-453.5 (listing additional unfair or deceptive acts or practices and preventative requirements).

⁸ 16 CFR. 453.2(b)(4).

disclosures.⁹ Third, funeral providers are required to tell persons “who ask by telephone about the funeral provider’s offerings or prices . . . any accurate information” from the GPL, CPL, or OBCPL, “and any other readily available information that reasonably answers the question.”¹⁰ Fourth, the Rule requires that, at the conclusion of the discussion of arrangements, funeral providers provide consumers with an itemized statement showing all the items selected by the customer and the itemized and total costs for those goods and services, along with other specific disclosures.¹¹

On February 14, 2020, the Commission initiated a review of the Rule as part of its periodic review of its rules and guides, and solicited comments on, among other issues, the continued usefulness of the Rule.¹² In response to its request for comments, the Commission received 785 comments from a diverse group of respondents. Most commenters supported the retention of the Rule, with many commenters proposing changes to its requirements.

On November 2, 2022, the Commission published an advance notice of proposed rulemaking (“ANPR”) in the *Federal Register*, announcing the Commission was considering several potential amendments to the Rule.¹³ The Commission sought comment about 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 of human remains; (5) whether the

⁹ 16 CFR 453.2(b)(2)-(3).

¹⁰ 16 CFR 453.2(b)(1).

¹¹ 16 CFR 453.2(b)(5).

¹² 85 FR 8490 (Feb. 14, 2020).

¹³ 87 FR 66096 (Nov. 2, 2022).

Rule's embalming disclosure requirements should be amended; (6) whether the Rule should be changed to improve the readability of the price lists; and (7) whether changes should be made to the Rule to avoid negatively impacting underserved communities.¹⁴ The comment period, as extended, closed on January 17, 2023.¹⁵ In response to the ANPR, the Commission received over 663 comments, including comments from consumers, consumer advocates, funeral homes, and industry advocates.

II. Issues for Discussion at the Workshop

As part of its rulemaking, the FTC is hosting an in-person public workshop to seek information about the potential amendments described in the 2022 ANPR. The workshop may cover such topics as:

- 1) Online or electronic disclosures of price information;
- 2) New forms of disposition of human remains; and
- 3) The GPL, including the readability of the GPL, the Rule's embalming disclosure requirement and other mandatory disclosures, whether third-party crematory fees and other third-party fees should be disclosed in the GPL, and whether funeral providers should be required or permitted to give out GPLs in languages other than English in any circumstances.

A more detailed agenda will be published at a later date, in advance of the scheduled workshop.

¹⁴ *See id.* at 66111–14.

¹⁵ *See* Press Release, FTC, FTC Extends Public Comment Period on Potential Funeral Rule Changes to January 17, 2023 (Dec. 21, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-extends-public-comment-period-potential-funeral-rule-changes-january-17-2023>.

III. Public Participation Information

A. Workshop Attendance

The in-person workshop, which is free and open to the public, will be conducted in a roundtable format and will be held at the Constitution Center, 400 7th Street SW, Washington, DC 20024. For admittance to the Constitution Center, all attendees must show valid government-issued photo identification, such as a driver's license. Please arrive early enough to allow adequate time for this process. The workshop will also be available for viewing via live webcast on the FTC's website at <https://www.ftc.gov/news-events/events/2023/09/funeral-rule-workshop>.

A court reporter will be present to record the proceedings so a transcription can be made for the public record. This event may also be photographed, videotaped, webcast, or otherwise recorded. By participating in this event, you are agreeing that your image—and anything you say or submit—may be posted indefinitely at <https://www.ftc.gov> or on one of the Commission's publicly available social media sites.

B. Requests to Participate as a Panelist

The workshop will be organized into one or more panels, which will address the designated topics. Panelists will be selected by FTC staff. Other attendees will have an opportunity to comment and ask questions. The Commission will place a transcript of the proceeding on the public record. Requests to participate as a panelist must be received on or before June 19, 2023, as explained in Section IV below. Persons selected as panelists will be notified on or before August 16, 2023.

Disclosing funding sources promotes transparency, ensures objectivity, and maintains the public's trust. If chosen, prospective panelists will be required to disclose the source of any

support they received in connection with their participation in the workshop. This information will be included in the published panelist bios as part of the workshop record.

C. Electronic and Paper Comments

The submission of comments is not required for participation in the workshop. If a person wishes to submit paper or electronic comments related to the issues discussed at the workshop, such comments should be filed as prescribed in Section IV of this document and must be received on or before October 10, 2023. The Commission invites comments only on the specific issues discussed at the workshop.

IV. Filing Comments and Requests to Participate as a Panelist

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 10, 2023. Write “Funeral Rule Workshop, 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 publicly available website, <https://www.regulations.gov>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by overnight service. To make sure the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form provided.

Because your comment will be placed on the public record, you are solely responsible for making sure 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 else’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 by 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 comments to be withheld from the public record.¹⁶ 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 on the <https://www.regulations.gov> website, 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.

Requests to participate as a panelist at the workshop should be submitted electronically to funeralrule@ftc.gov, or, if mailed, should be submitted in the manner detailed below. For the Commission to consider your request to participate as a panelist, we must receive it by June 19, 2023. Parties are asked to include in their requests a brief statement setting forth their expertise

¹⁶ See 16 CFR 4.9(c).

in or knowledge of the issues on which the workshop will focus, as well as their contact information, including a telephone number and email address (if available), to enable FTC staff to notify them if they are selected.

If you file request to participate on paper, write “Funeral Rule Workshop, Project No. P034410” on your request to participate, and on the envelope, and mail your request to participate to the Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC–5610 (Annex F), Washington, DC 20580. If possible, submit your request to participate to the Commission by overnight service.

Visit the Commission website at <https://www.ftc.gov> to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before October 10, 2023. The Commission will consider all timely requests to participate as a panelist in the workshop it receives by June 19, 2023. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Secretary.