

**Supporting Statement for Information Collection
Provisions of the FTC Funeral Industry Practices Rule
16 C.F.R. 453
(OMB Control No. 3084-0025)**

1. Necessity for Collection of Information

The Funeral Rule ensures that consumers who are purchasing funeral goods and services have access to accurate itemized price information so they can purchase only the funeral goods and services they want or need. In particular, the Rule requires a funeral provider to: (1) give consumers a copy they can keep of the funeral provider's general price list that itemizes the goods and services they offer; (2) show consumers their casket price list and their outer burial container price list at the outset of any discussion of those items or their prices, and in any event before showing consumers caskets or burial containers; (3) provide price information from their price lists over the telephone; and (4) give consumers a statement of funeral goods and services selected after determining the funeral arrangements with the consumer (the "arrangements conference").

Consumers make at-need purchase decisions regarding funeral goods and services subject to extreme time pressure and emotional vulnerability. In adopting the Rule, the Federal Trade Commission ("FTC" or "Commission") concluded that the rulemaking record indicated that industry members often failed to give consumers needed information about the prices of individual components of a funeral and about funeral-related legal requirements. The price lists and statement of goods and services required by the Rule increase consumer welfare by: (1) allowing consumers to make purchase decisions based on accurate price information and accurate information about what they are and are not required to purchase, and (2) allowing consumers review of their selections and the related prices.

The Funeral Rule also requires that funeral providers retain records demonstrating their compliance with the price list and other provisions of the Rule for a one-year period. These recordkeeping provisions help the Commission to monitor and ensure effectively compliance with the Rule. The recordkeeping requirements do this by assuring that much of the information that must be disclosed to consumers is readily available for examination by Commission staff during law enforcement activities.

2. Use of information

The collection of information required by the Funeral Rule amounts to the production of price lists and statements of goods and services, including required disclosures, the retention of these price lists and statements, and the provision of price information in response to telephone inquiries. These requirements help to ensure that price information is readily available to consumers so they can comparison shop for funeral goods and services. In addition, disclosures required to appear on the general price list inform consumers that they have the right to purchase only those goods and services that they specifically select. The Rule seeks to promote informed decision-making so that consumers are able to make funeral arrangements within their means.

The Rule's recordkeeping provision allows the Commission, at any time, to check on current and previous compliance.

3. Consideration of the Use of Improved Information Technology to Reduce Burden

Consistent with the objectives of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, the Rule permits providers to use a variety of technologies to reduce the burden of compliance. For example, funeral providers may maintain their price lists and statements of goods and services on computers and thereby reduce the time it may take to produce or revise price lists and statements.

4. Efforts to Identify Duplication

The Rule requires the preparation, distribution, and retention of price lists and statements of goods and services. No other federal law or regulation requires that these records be prepared or kept since the records are specifically tailored to the Rule's provisions. Many states have disclosure requirements that are similar to those the Rule requires, and these states may also impose their own recordkeeping requirements. Although states may impose their own requirements, most incorporate by reference the Rule's requirements or substantially mirror them.

5. Impact on Small Businesses

Many of the approximately 19,900+ funeral providers in the United States are small businesses. A continuing trend in the industry, however, is the corporate ownership of funeral homes across the country. Corporate or "chain" ownership of funeral homes currently characterizes approximately 20-25 percent of the funeral industry. This concentration in ownership of funeral providers has the effect of transferring the impact of the Funeral Rule from small to large business entities. In any event, the burden of complying with the Rule is fairly minimal both as to small businesses and large corporations. There is no reporting requirement for funeral providers, the price lists that funeral providers must prepare and retain are uncomplicated, and the recordkeeping requirements are simple and short in duration. The Rule also allows funeral providers to consolidate the lists that they are required to provide to consumers.

6. Consequences of Conducting Collection Less Frequently

Less frequent disclosure of prices and other information relating to funeral goods and services would undermine the Rule's purpose. Every consumer benefits from receiving price and funeral requirement information. Requiring less frequent disclosure of this information would mean that some consumers would not have the same or similar ability to make informed funeral purchase decisions.

The Rule's recordkeeping provision simply requires funeral providers to retain certain records for one year. A record retention period shorter than that would hamper the

Commission's ability to verify a funeral provider's compliance with the Rule. The Commission would have a narrower provider history to refer to and less time to verify and review complaints regarding price lists and other disclosures. Moreover, when investigating some Funeral Rule violations, the Commission may survey a number of former customers of the funeral home. Commission staff obtains the names and addresses of these customers from the itemized customer statements that the Rule requires funeral providers to retain for one year. The Commission seeks to avoid contacting recent mourners, and a record retention period under one year would make it harder for the Commission to exercise this discretion and to gather related information needed to pursue enforcement actions.

7. Special Circumstances

None. The Funeral Rule's recordkeeping requirements are consistent with the guidelines contained in 5 C.F.R. § 1320.5(d)(2).

8. Public Comments/Consultation Outside the Agency

(a) Public comments

The Commission most recently sought public comment on the Paperwork Reduction Act (44 U.S.C. Chapter 35) aspects of the Rule, as required by 5 C.F.R. § 1320.8(d). *See* 76 Fed. Reg. 26,297 (May 6, 2011). No comments were received. The Commission is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rule.

(b) Consultation Outside the Agency

In the process of promulgating the Funeral Rule, the Commission provided extensive opportunities for the public to comment on its provisions. For example, during the rulemaking proceeding, the Commission held public hearings, with testimony offered from hundreds of witnesses representing funeral groups, funeral directors and state licensing board representatives.¹ In addition, the Commission received written comments from over 9,000 consumers, academics, experts, state officials, funeral directors, clergy, and other interested members of the public, with hundreds of additional comments submitted in public comment periods. Finally, representatives of all major interested parties participated in two oral presentations to the Commissioners.

¹ The Commission held 52 days of public hearings in six cities during the rulemaking proceeding at which testimony from 315 witnesses, including 58 funeral group representatives, 42 individual funeral directors, and 21 state licensing board representatives was entered in to the record. Staff also met with representatives of the Conference of Funeral Service Examining Boards (a national organization composed of state funeral licensing boards) and the Continental Association of Funeral and Memorial Societies (a national trade association of memorial societies that are non-profit consumer cooperatives organized to provide information and assistance to their members concerning funeral arrangements).

In response to concerns raised during the rulemaking, the Commission amended the original proposed Funeral Rule in the following ways: (1) the recordkeeping requirement was reduced from three years to one; (2) required disclosures were incorporated into the price lists and statement of services selected, eliminating the need to maintain separate disclosure sheets; and (3) required price information may be incorporated into one document, i.e., a general price list, thus, enabling funeral providers to choose to list prices for caskets and outer burial containers once, rather than preparing three separate documents. Each of these modifications enabled funeral providers seeking to comply with the Funeral Rule to store fewer documents and still be compliant with the Rule's recordkeeping requirements.

The initial Rule review, which led to the Rule's amendment in 1994, also yielded much information from industry members and consumers and consumer groups,² including information addressing the Rule's recordkeeping requirements. In response to these comments, the amended Funeral Rule, published in 1994, resulted in modifications. The most significant reduction of recordkeeping burden derived from the elimination in 1994 of the requirement that funeral providers give each customer a separate "Statement of Funeral Goods and Service Selected." Instead, the amended Rule provided that disclosures that formerly would have appeared on the statement could be incorporated into the final contract, bill, or other document that funeral providers already used to memorialize sales agreements with customers. Since such documents would be retained for at least one year in the ordinary course of business for tax purposes, the Commission believed that the additional burden imposed by the requirement, if any, would be minimal.

A second significant modification to the original Rule was made in the 1994 amendment proceeding. As a result of consultation with the public and funeral providers during the initial rule review, the Commission concluded that some of the telephone disclosure requirements that were part of the original Rule were unnecessary because the costs to providers outweighed the benefits to consumers. Accordingly, the Commission eliminated the Rule's affirmative telephone price disclosure requirements in the 1994 amended Rule.

In 1999, the Commission initiated another review of the Funeral Rule, pursuant to its published schedule for reviewing all rules and guides. The request for comment in this proceeding elicited 151 public comments from industry and consumer group, including multiple surveys from various organizations. Staff also held a public workshop in this proceeding, in which individuals from 24 organizations participated at a round table discussion, and an additional 16 members of the public made brief statements that were also placed on the record. Upon the completion of the rule review, the Commission declined to propose various

² In addition to written comments, several national surveys of funeral directors, state laws, and consumer opinions were submitted and entered into the record. And, 83 witnesses testified at public hearings and 189 individuals and organizations provided testimonial and other evidence.

amendments that some commenters advocated, while concluding that the Rule in its current form continues to be valuable to consumers and that the benefits of the Rule outweigh the costs.³

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

No assurance of confidentiality is necessary as funeral providers do not register or file any documents with the Commission. To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6 (f) and 21 of the FTC Act will apply. 15 U.S.C. §§ 46(f), 57b-2.

11. Sensitive or Private Information

The Funeral Rule does not require the disclosure of any private or sensitive matters. Some records kept due to the Rule's requirements may, at the option of the funeral provider, contain personal information regarding a consumer's funeral choices, including religious affiliation, and personal information regarding the consumer. This information, if collected by the Commission for law enforcement purposes, would be protected by Sections 6(f) and 21 of the FTC Act.

12. Estimated Hours Burden

The estimated burden associated with the collection of information required by the Rule is 19,902 hours for recordkeeping, 101,076 hours for disclosures, and 39,804 hours for training, for a total of 160,782 hours. This estimate is based on the number of funeral providers (approximately 19,902),⁴ the number of funerals per year (an estimated 2,436,682),⁵ and the time needed to fulfill the information collection tasks required by the Rule.

³ 73 Fed. Reg. 13,740 (Mar. 14, 2008).

⁴ The estimated number of funeral providers is from 2010 data provided on the National Funeral Directors Association ("NFDA") website (*see* <http://www.nfda.org/about-funeral-service/trends-and-statistics.html>).

⁵ The estimated number of funerals conducted annually is derived from the National Center for Health Statistics ("NCHS"), <http://www.cdc.gov/nchs/>. According to NCHS, 2,436,682 deaths occurred in the United States in 2009, the most recent year for which final data is available. *See* National Vital Statistics Reports, vol. 59, no. 4 "Preliminary Data for 2009," *available at* http://www.cdc.gov/nchs/data/nvsr/nvsr59/nvsr59_04.pdf. Staff believes this is a conservative estimate because not all remains go to a funeral provider covered by the Rule (e.g., remains sent directly to a crematory that does not sell urns; remains donated to a medical school, etc.).

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 19,902 providers is 19,902 hours.

Disclosure: As noted above, the Rule requires that funeral providers: (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

1. Maintaining current price lists requires that funeral providers revise their price lists from time to time throughout the year to reflect price changes. Staff estimates, consistent with its current clearance, that this task requires a maximum average burden of two and one-half hours per provider per year. Thus, the total burden for 19,902 providers is 49,755 hours.

2. Staff retains its prior estimate that 13% of funeral providers prepare written documentation of funeral goods and services selected by consumers specifically due to the Rule's mandate. The original rulemaking record indicated that 87% of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.⁶

According to the rulemaking record, the 13% of funeral providers who did not provide written documentation prior to enactment of the Rule are typically the smallest funeral homes. The written documentation requirement can be satisfied through the use of a standard form, an example of which the FTC has provided to all funeral providers in its compliance guide.⁷ Based on an estimate that these smaller funeral homes arrange, on average, approximately twenty funerals per year and that it would take each of them about three minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with the written documentation requirement is one hour per provider, for a total of 2,587 hours [(19,902 funeral providers x 13%) x (20 statements per year x 3 minutes per statement)].

3. The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Information received in 2002 from the NFDA indicates that only about 12% of funeral purchasers make telephone inquiries, with each call lasting an estimated ten minutes.⁸ Thus, assuming that the average purchaser who makes telephone

⁶ In a 2002 public comment, the National Funeral Directors Association asserted that nearly every funeral home had been providing consumers with some kind of final statement in writing even before the Rule took effect. Nonetheless, in an abundance of caution, staff continues to retain its prior estimate based on the original rulemaking record.

⁷ The compliance guide is available at <http://business.ftc.gov/documents/bus05-complying-funeral-rule>.

⁸ No more recent information thus far has been available. The Commission invites submission of more recent data or studies on this subject.

inquiries places one call per funeral to determine prices,⁹ the estimated burden is 48,734 hours (2,436,682 funerals per year x 12% x 10 minutes per inquiry). This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the burden due to the Rule's disclosure requirements totals 101,076 hours (49,755 + 2,587 + 48,734).

Training: In addition to the recordkeeping and disclosure-related tasks noted above, funeral homes may also have training requirements specifically attributable to the Rule. Staff believes that annual training burdens associated with the Rule should be minimal because Rule compliance is generally included in continuing education requirements for state licensing and voluntary certification programs. Staff estimates that, industry-wide, funeral homes would incur no more than 39,804 hours related to training specific to the Rule each year. This estimate is consistent with staff's assumption for the current clearance that an "average" funeral home consists of approximately five employees (full-time and part-time employment combined), but with no more than four of them having tasks specifically associated with the Funeral Rule. Staff retains its estimate that each of the four employees (three directors and a clerical receptionist) per firm would each require one-half hour, at most, per year, for such training.¹⁰ Thus, total estimated time for training is 39,804 hours (4 employees per firm x ½ hour x 19,902 providers).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

Clerical personnel, at an hourly rate of \$15,¹¹ can perform the recordkeeping tasks required under the Rule. Based on the estimated hours burden of 19,902 hours, estimated labor cost for recordkeeping is \$298,530.

⁹ Although consumers who pre-plan their own arrangements may comparison shop and call more than one funeral home for pricing and other information, consumers making "at need" arrangements after a death are less likely to take the time to seek pricing information from more than one home. Many fail to seek any pricing information by telephone. Staff therefore believes that an average of one call per funeral is a conservative assumption.

¹⁰ Funeral homes, depending on size and/or other factors, may be run by as few as one owner, manager, or other funeral director to multiple directors at various compensation levels. Extrapolating from past NFDA survey input, staff has theorized an "average" funeral home of approximately five employees, with management personnel and a clerical receptionist being those who would require training for Funeral Rule compliance. Staff conservatively assumes that the "average" home would consist of an owner/manager, funeral director/embalmer, and, as further sub-classified by the NFDA, a "funeral director only." In addition to that, staff assumes the home would also have one clerical receptionist. Compliance training for other employees (e.g., drivers, maintenance personnel) would be inapplicable.

¹¹ Based on the "National Compensation Survey: Occupational Wages in the United States, 2010," U.S. Department of Labor, Bureau of Labor Statistics (May 2011) ("BLS National Compensation Survey"), available at <http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf>. Clerical estimates are derived from the above source data, rounded upward, for "receptionist and information clerks."

The two and one-half hours required of each provider, on average, to update price lists should consist of approximately one and one-half hours of managerial or professional time, at an estimated \$35 per hour,¹² and one hour of clerical time, at \$15 per hour, for a total of \$67.50 per provider [(\$35 per hour x 1.5 hours) + (\$15 per hour x 1 hour)]. Thus, the estimated total labor cost burden for maintaining price lists is \$1,343,385 (\$67.50 per provider x 19,902 providers).

The incremental cost to the 13% of small funeral providers who would not otherwise supply written documentation of the goods and services selected by the consumer, as previously noted, is 2,587 hours. Assuming managerial or professional time for these tasks at approximately \$35 per hour, the associated labor cost would be \$90,545 (2,587 hours x \$35 per hour).

As previously noted, staff estimates that 48,734 hours of managerial or professional time is required annually to respond to telephone inquiries about prices.¹³ The cost of 48,734 hours of managerial or professional time for responding to telephone inquiries about prices at \$35 per hour, is \$1,705,690 (48,734 hours x \$35 per hour).

Based on past consultations with funeral directors, FTC staff estimates that funeral homes will require no more than two hours of training of licensed and non-licensed funeral home staff to comply with the Funeral Rule,¹⁴ with four employees of varying types each spending one-half hour on training. Consistent with past assumptions stated above,¹⁵ paired with updated estimates, the Commission is assuming that three funeral directors, at hourly wages of \$35, \$23, and \$20,¹⁶ respectively, as well as one clerical or administrative staff member, at \$15 per hour, require such training, for a total burden of 39,804 hours (19,902 funeral homes x 2 hours total per establishment), and \$925,443 [(\$35 + \$23 + \$20 + \$15) x ½ hour per employee x 19,902 funeral homes].

¹² The hourly rate is derived from the median annual salary of a funeral home owner/manager, found in the 2010 NFDA Member Compensation Survey. See <http://www.nfda.org/news-a-events/all-press-releases/2289-nfda-releases-results-of-2010-member-compensation-survey.html>. Dividing the median annual salary an assumed 2,000 hour work year yields the hourly rate, albeit broadly rounded upward to \$35.

¹³ Although some funeral providers may permit staff who are not funeral directors to provide price information by telephone, the great majority reserve that task to a licensed funeral director.

¹⁴ Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, as noted above, the FTC provides its compliance guide to all funeral providers at no cost, and it is available on the FTC web site. See *supra* note 7. Additionally, the NFDA provides online guidance for compliance with the Rule: <http://www.nfda.org/onlinelearning-ftc.html>.

¹⁵ See note 10 and accompanying text.

¹⁶ The hourly rates are derived from median annual salaries of a funeral home owner/manager, funeral director/embalmer, and “funeral director only” found in the 2010 NFDA Member Compensation Survey. See <http://www.nfda.org/news-a-events/all-press-releases/2289-nfda-releases-results-of-2010-member-compensation-survey.html>. Hourly rates were then determined by dividing those salaries by an assumed 2,000 hour work year, then rounded.

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is \$3,139,620 (\$1,343,385 + \$90,545 + \$1,705,690). The total labor cost for recordkeeping is \$298,530. The total labor cost for disclosures, recordkeeping, and training is \$4,363,593 (\$3,139,620 for disclosures + \$298,530 for recordkeeping + \$925,443 for training).

13. Estimated Capital/Other Non-Labor Costs Burden

The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of required disclosures. Assuming that one copy of the general price list is provided to consumers for each funeral or cremation conducted, at \$.25 per copy, as required by the Rule,¹⁷ this would amount to 2,436,682 copies per year at a cumulative industry cost of \$609,171¹⁸ (2,436,682 funerals per year¹⁹ x 25¢ per price list). In addition, the funeral providers that furnish consumers with a statement of funeral goods and services solely because of the Rule's mandate will incur additional printing and copying costs. Assuming that those 2,587 providers (19,902 funeral providers x 13%) use the standard two-page form shown in the compliance guide, at twenty-five cents per copy, at an average of twenty funerals per year, the added cost burden would be \$12,935 (2,587 providers x 20 funerals per year x 25¢). Thus, estimated non-labor costs total \$622,106.²⁰

14. Estimated Cost to the Federal Government

Staff estimates that the yearly cost to the Federal Government resulting from administration of the Rule's disclosure requirements is estimated to be \$97,500 (1.5 work years among staff attorneys and investigators at an average annual salary of \$65,000).

15. Adjustments

The estimated annual hours burden has decreased approximately 1,200 hours from prior

¹⁷ Although copies of the casket price list and outer burial container price list must be shown to consumers, the Rule does not require that they be given to consumers. Thus, the cost of printing a single copy of these two disclosures to show consumers is *de minimis*, and is not included in this estimate of printing costs.

¹⁸ This is a mathematical correction of the \$624,171 that appeared in the May 8, 2011 and August 4, 2011 *Federal Register* notices (76 Fed. Reg. 26297, 76 Fed. Reg. 47183) for the instant clearance request.

¹⁹ See note 5 and accompanying text.

²⁰ This corrects the \$637,106 reported in the associated *Federal Register* notices, which added \$12,935 to \$624,171 instead of \$609,171. See note 18.

cleared estimates, largely due to a decline in the estimated number of funeral providers (from 20,300 to 19,902). Estimated labor costs have correspondingly declined, apart from partially offsetting increases from updated hourly labor rates assigned.

Cumulative non-labor/capital costs have also declined tied to the reduced estimate of funeral providers. Additional declines are attributable to estimation of non-labor costs for price lists. Staff previously estimated for the cost of printing two price lists per funeral per year. As explained *supra* in note 17, staff's estimate is now based on the assumption that one copy -- of the general price list -- is provided to consumers for each funeral or cremation conducted. Conversely, while the number of reported deaths, upon which staff derives its estimate of the number of funerals per year, have declined relative to data used for the preceding clearance request, the current estimates, in contrast to preceding ones, are not rounded; the net effect is an increased estimate of the number of funerals per year (2,436,682) relative to the preceding estimate (2,400,000).

16. Plans for Tabulation and Publication

There are no plans to publish any information.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to Certification

Not applicable.