

**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 it offers; (2) show consumers its casket price list and its 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 its 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 to review their selections and the related prices. These requirements also increase consumer welfare for purchasers making pre-need funeral arrangements by allowing them to compare the prices and services of competing funeral providers.

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 effectively monitor and ensure 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 and state regulators for law enforcement purposes.

2. Use of information

The collection of information required by the Funeral Rule amounts to the preparation and printing 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. 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 prior 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 them.

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 these 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 (one year). The Rule also allows funeral providers to consolidate the price lists they are required to provide to consumers into a single general price list.

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 information about funeral requirements and prices. Requiring less frequent disclosure of this information would mean that some consumers would not have the same or similar ability to make informed funeral purchasing 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. Circumstances Requiring Collection Inconsistent With Guidelines

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

The Commission most recently sought public comment on the Paperwork Reduction Act (44 U.S.C. Chapter 35) ("PRA") aspects of the Rule, as required by 5 C.F.R. § 1320.8(d). *See* 82 Fed. Reg. 12,602 (March 6, 2017). No relevant 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.

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 contain, at the option of the funeral provider, 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 19,322 hours for recordkeeping, 103,345 hours for disclosure, and 38,644 hours for compliance training for a cumulative total of 161,311 hours. This estimate is based on the

number of funeral providers (approximately 19,322),¹ the number of funerals per year (an estimated 2,626,418),² and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain for one year 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 19,322 providers is 19,322 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 accurate price lists may require that funeral providers revise their price lists occasionally (most do so once a year, some less frequently) to reflect price changes. Staff conservatively estimates that this task may require a maximum average burden of two and one-half hours per provider per year. Thus, the total burden for 19,322 providers is 48,305 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.³

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.⁴ Based on FTC staff's continuing estimate that these smaller funeral homes arrange, on average,

¹ The estimated number of funeral providers is from 2017 data provided on the National Funeral Directors Association ("NFDA") website (see <http://www.nfda.org/news/statistics>) (within "General Funeral Service Facts").

² 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, 2,626,418 deaths occurred in the United States in 2014, the most recent year for which final data is available. See, e.g., Table 1 ("Number of deaths, death rates, and age-adjusted death rates, by race and sex: United States, 1940, 1950, 1960, 1970, and 1980–2014") (https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf) (June 30, 2016). 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.).

³ 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.

⁴ The compliance guide is available at <http://business.ftc.gov/documents/bus05-complying-funeral-rule>.

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 2,512 hours [(19,322 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.⁵ Thus, assuming that the average purchaser within that subset makes one call per funeral to determine pricing,⁶ the estimated burden is 52,528 hours (2,626,418 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 103,345 hours (48,305 + 2,512 + 52,528).

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 39,360 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 per firm would each require one-half hour, at most, per year, for such training.⁷ Thus, total estimated time for training is 38,644 hours (4 employees per firm x ½ hour x 19,322 providers).

⁵ No more recent information thus far has been available. The Commission invites submission of more recent data or studies on this subject.

⁶ 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, as to the estimated 12% of funeral purchasers who call to price shop, an average of one call per funeral is a conservative assumption.

⁷ 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 four employees (a funeral services manager, funeral director, embalmer, and a clerical receptionist) having tasks and training associated with Funeral Rule compliance. Compliance training for other employees (e.g., drivers, maintenance personnel, attendants) would not be necessary.

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.⁸

Clerical personnel, at an hourly rate of \$11.33,⁹ can perform the recordkeeping tasks required under the Rule. Based on the estimated hours burden of 19,322 hours, estimated labor cost for recordkeeping is \$218,918.

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 \$42.82 per hour,¹⁰ and one hour of clerical time, at \$11.33 per hour, for a total of \$75.56 per provider [(\$42.82 per hour x 1.5 hours) + (\$11.33 per hour x 1 hour)]. Thus, the estimated total labor cost burden for maintaining price lists is \$1,459,970 (\$75.56 per provider x 19,322 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 2,512 hours. Assuming managerial or professional time for these tasks at approximately \$42.82 per hour, the associated labor cost would be \$107,564.

As previously noted, staff estimates that 52,528 hours of managerial or professional time is required annually to respond to telephone inquiries about prices.¹¹ The associated labor cost at \$42.82 per hour is \$2,249,249.

Based on past consultations with funeral directors, FTC staff estimates that funeral homes will require no more than two hours of training per year of licensed and non-licensed funeral home staff to comply with the Funeral Rule,¹² with four employees of varying types each

⁸ The mean hourly wages used for labor cost estimates in this Notice incorporate Bureau of Labor Statistics updates (last modified March 31, 2017) to the figures the FTC used for the March 6, 2017 Notice: Bureau of Labor Statistics, "May 2016 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 812200 - Death Care Services," available at http://www.bls.gov/oes/current/naics4_812200.htm#11-0000.

⁹ Clerical related estimates are based on the mean hourly wage data for "receptionists and information clerks." *See id.*

¹⁰ Managerial or professional estimates are based on the mean hourly wage data for "funeral service managers." *See id.* at *supra* note 8.

¹¹ Although some funeral providers may permit staff whom are not funeral directors to provide price information by telephone, the great majority reserve that task to a licensed funeral director. Since funeral home managers are also licensed funeral directors in most cases, we have used, conservatively, the mean hourly wage for "funeral service managers," rather than "funeral directors," for this calculation.

¹² 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 4. Additionally, the NFDA provides online guidance for compliance with the Rule: <http://www.nfda.org/onlinelearning-ftc.html>.

spending one-half hour on training. Applying the assumptions stated above,¹³ FTC staff further assumes labor costing as follows for the affected employees' time for compliance training: (a) funeral service manager (\$42.82 per hour); (b) non-manager funeral director (\$26.21 per hour); (c) embalmer (\$20.31 per hour); and (d) a clerical receptionist or administrative staff member, at \$11.33 per hour.¹⁴ This amounts to \$972,573, cumulatively, for all funeral homes [(\$42.82+ \$26.21 + \$20.31 + \$11.33) x ½ hour per employee x 19,322 funeral homes].

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is \$3,816,783 (\$1,459,970 + \$107,564 + \$2,249,249). The total labor cost for recordkeeping is \$218,918. The total labor cost for disclosure, recordkeeping, and training is \$5,008,274 (\$3,816,783 for disclosure + \$218,918 for recordkeeping + \$972,573 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 necessary 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, as required by the Rule, that one copy of the general price list is provided to consumers for each funeral or cremation conducted, at a cost of 25¢ per copy,¹⁵ this would amount to 2,626,418 copies per year at a cumulative industry cost of \$656,605 (2,626,418 funerals per year¹⁶ x 25¢ per copy). 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 2,512 providers (19,322 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 \$12,560 (2,512 providers x 20 funerals per year x 25¢). Thus, estimated non-labor costs total \$669,165 (\$656,605 + 12,560).

¹³ See *supra* note 7 and accompanying text.

¹⁴ [Mean hourly wages, respectively, for a funeral service manager, funeral director, and embalmer](#). See *supra* note 9. See *supra* notes 8 and 9 regarding the mean hourly wage for "receptionists and information clerks."

¹⁵ 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. Moreover, the general price list need not exceed, and may be still shorter than, the two-page model provided in the compliance guide.

¹⁶ See *supra* note 2 and accompanying text.

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 \$97,500 (1.5 work years among staff attorneys and investigators at an average annual salary of \$65,000).

15. Adjustments/Changes in Burden

There is no program change. The differences in burden estimates from the prior clearance reflect an increase in the estimated number of funerals (based on newer data on the number of deaths in the U.S.) and a decrease in the estimated number of providers (based on updated data on the NFDA website). The net effect on burden hours (an increase of 250 hours from the previously cleared burden hour total) is largely a wash. These factors influenced modest increases in estimated labor and non-labor costs, although increased labor cost estimates were additionally a function of newer, higher mean hourly wage inputs for the associated calculations above.

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.