



This document is scheduled to be published in the Federal Register on 03/18/2014 and available online at <http://federalregister.gov/a/2014-05847>, and on FDsys.gov

[Billing code: 6750-01-S]
FEDERAL TRADE COMMISSION

**Agency Information Collection Activities;
Proposed Collection; Comment Request; Extension**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for information collection requirements contained in its Funeral Industry Practice Rule (“Funeral Rule” or “Rule”). That clearance expires on September 30, 2014.

DATES: Comments must be filed by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Paperwork Comment: FTC File No. P084401” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/funeralrulepra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Funeral Rule should be directed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, ctregillus@ftc.gov, (202) 326-2970.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Funeral Rule, 16 CFR Part 453 (OMB Control Number 3084-0025).

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 (“GPL”) that itemizes the goods and services they offer; (2) show consumers their Casket Price List (“CPL”) and their Outer Burial Container Price List (“OBCPL”) 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 (“SFGSS”) after determining the funeral arrangements with the consumer (the “arrangements conference”). The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

The estimated burden associated with the collection of information required by the Rule is 19,680 hours for recordkeeping, 102,021 hours for disclosure, and 39,360 hours for compliance training for a cumulative total of 161,061 hours. This estimate is based on the

number of funeral providers (approximately 19,680),¹ the number of funerals per year (an estimated 2,513,171),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 19,680 providers is 19,680 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 19,680 providers is 49,200 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

¹ The estimated number of funeral providers is from 2012 data provided on the National Funeral Directors Association ("NFDA") website (see <http://nfda.org/about-funeral-service-trends-and-statistics.html>).

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, 2,513,171 deaths occurred in the United States in 2011, the most recent year for which final data is available. See National Vital Statistics Reports, vol. 61, no. 06, "Deaths: Preliminary Data for 2011," available at http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.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.).

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 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 2,558 hours [(19,680 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 who makes telephone inquiries places one call per funeral to determine prices,⁶ the estimated burden is 50,263 hours (2,513,171 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.

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>.

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 an average of one call per funeral is a conservative assumption.

In sum, the burden due to the Rule's disclosure requirements totals 102,021 hours (49,200 + 2,558 + 50,263).

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 39,360 hours (4 employees per firm x ½ hour x 19,680 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 \$13.00,⁸ can perform the recordkeeping tasks required under the Rule. Based on the estimated hours burden of 19,680 hours, estimated labor

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.

⁸ <http://www.bls.gov/news.release/pdf/ocwage.pdf>: Bureau of Labor Statistics, Economic News Release, March 29, 2013, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2012." Clerical estimates are derived from the above source data, rounded upward, for "receptionists and information clerks."

cost for recordkeeping is \$255,840.

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 \$38.42 per hour,⁹ and one hour of clerical time, at \$13.00 per hour, for a total of \$70.63 per provider $[(\$38.42 \text{ per hour} \times 1.5 \text{ hours}) + (\$13.00 \text{ per hour} \times 1 \text{ hour})]$. Thus, the estimated total labor cost burden for maintaining price lists is \$1,389,998 ($\$70.63 \text{ per provider} \times 19,680 \text{ providers}$).

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 2,558 hours. Assuming managerial or professional time for these tasks at approximately \$38.42 per hour, the associated labor cost would be \$98,278.

As previously noted, staff estimates that 50,263 hours of managerial or professional time is required annually to respond to telephone inquiries about prices.¹⁰ The associated labor cost at \$38.42 per hour is \$1,931,104.

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,¹¹ with four employees of varying types each

⁹ Bureau of Labor Statistics, “May 2012 National Industry-Specific Occupational Employment and Wage Estimates,” NAICS 812200 - Death Care Services: http://www.bls.gov/oes/current/naics4_812200.htm#11-0000.

¹⁰ 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.

¹¹ 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,¹² FTC staff further assumes labor costing as follows for the affected employees' time for compliance training:

(a) funeral service manager (\$38.42 per hour); (b) non-manager funeral director (\$25.19); (c) embalmer (\$21.03 per hour); and (d) a clerical receptionist or administrative staff member, at \$13 per hour.¹³ This amounts to \$960,778, cumulatively, for all funeral homes $[(\$38.42 + \$25.19 + \$21.03 + \$13) \times \frac{1}{2} \text{ hour per employee} \times 19,680 \text{ funeral homes}]$.

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is \$3,419,380 (\$1,389,998 + \$98,278 + \$1,931,104). The total labor cost for recordkeeping is \$255,840. The total labor cost for disclosure, recordkeeping, and training is \$4,635,998 (\$3,419,380 for disclosure + \$255,840 for recordkeeping + \$960,778 for training).

Capital or other non-labor costs: 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,

¹² See note 7 and accompanying text.

¹³ Bureau of Labor Statistics, "May 2012 National Industry-Specific Occupational Employment and Wage Estimates," NAICS 812200 - Death Care Services: http://www.bls.gov/oes/current/naics4_812200.htm#11-0000 (mean hourly wages for funeral service manager, funeral director, embalmer). See *supra* note 8 and accompanying text regarding the mean hourly wage for "receptionists and information clerks."

at a cost of 25¢ per copy,¹⁴ this would amount to 2,513,171 copies per year at a cumulative industry cost of \$628,293 (2,513,171 funerals per year¹⁵ 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 2,558 providers (19,680 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 \$12,790 (2,558 providers x 20 funerals per year x 25¢). Thus, estimated non-labor costs total \$641,083.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 60 days from FEDERAL REGISTER date of publication]. Write "Paperwork Comment: FTC File No. P084401" 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 public Commission Website, at

<http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to

¹⁴ 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.

¹⁵ See note 2 and accompanying text.

remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like 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 that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential" as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).¹⁶ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

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. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/funeralrulepra>, by following the instructions on the web-

¹⁶ 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), 16 CFR 4.9(c).

based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Website.

If you file your comment on paper, write “Paperwork Comment: FTC File No. P084401” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that 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 that it receives on or before [insert date 60 days from FEDERAL REGISTER date of publication]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,
Principal Deputy General Counsel.

[FR Doc. 2014-05847 Filed 03/17/2014 at 8:45 am; Publication Date: 03/18/2014]