

programs, staff estimates that, industry-wide, funeral homes should incur no more than 40,600 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 employee) per firm would each require one-half hour, at most, per year, for such training. Thus, total estimated time for training is 40,600 hours (4 employees per firm  $\times$  1/2 hour  $\times$  20,300 providers).

*Estimated annual cost burden:*

\$3,524,000 in labor costs and \$1,226,000 in non-labor costs.

*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 estimated hourly rate of \$13, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 20,300 hours, the estimated labor cost burden for recordkeeping is \$263,900.

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 \$27.50 per hour, and one hour of clerical time, at \$13 per hour, for a total of \$54.25 per provider<sup>8</sup> [(\$27.50 per hour  $\times$  1.5 hours) + (\$13.00 per hour  $\times$  1 hour)]. Thus, the estimated total labor cost burden for maintaining price lists is \$1,101,275 (\$54.25 per provider  $\times$  20,300 providers).

The incremental cost to the 13% of small funeral providers not previously providing written documentation of the goods and services selected by the consumer, as previously noted, is 2,639 hours. Assuming managerial or professional time for these tasks at approximately \$27.50 per hour, the

associated labor cost would be \$72,572.50 (2,639 hours  $\times$  \$27.50 per hour).

As previously noted, staff estimates that 48,000 hours of managerial or professional time is required annually to respond to telephone inquiries about prices. The cost of 48,000 hours of managerial or professional time for responding to telephone inquiries about prices at \$27.50 per hour, is \$1,320,000 (48,000 hours  $\times$  \$27.50 per hour).

The cost of training licensed and non-licensed funeral home staff to comply with the Funeral Rule is two hours per funeral home, with four employees of varying ranks each spending one-half hour on training. Consistent with estimates in the current clearance, the Commission is assuming that three funeral directors, at hourly wages of \$27.50, \$20, and \$15, respectively, as well as one clerical or administrative staff member, at \$13 per hour, require such training, for a total burden of 40,600 hours (20,300 funeral homes  $\times$  2 hours total per establishment), and \$766,325 [(\$27.50 + \$20 + \$15 + \$13)  $\times$  1/2 hour per employee  $\times$  20,300 funeral homes].

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is \$2,493,847.50 (\$1,101,275 + \$72,572.50 + \$1,320,000). The total labor cost for recordkeeping is \$263,900. The total labor cost for disclosures, recordkeeping and training is \$3,524,000 (\$263,900 for recordkeeping + \$766,325 for training + \$2,493,847.50 for disclosures), rounded to the nearest thousand.

*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 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 price lists. Assuming that two price lists per funeral/cremation are created by industry to adhere to the Rule, 4,800,000 copies per year are made for a total cost of \$1,200,000 (2,400,000 funerals per year  $\times$  2 copies per funeral  $\times$  \$.25 per copy). In addition, the estimated 2,639 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those

providers use the standard two-page form shown in the Compliance Guide, at twenty-five cents per page, at an average of twenty funerals per year, the added cost burden would be \$26,390 (2,639 providers  $\times$  20 funerals per year  $\times$  2 pages per funeral  $\times$  \$.25). Thus, estimated non-labor costs are \$1,226,000, rounded to the nearest thousand.

**William Blumenthal,**  
*General Counsel.*

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## FEDERAL TRADE COMMISSION

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

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act. The Federal Trade Commission ("FTC" or "Commission") is seeking public comments on its proposal to extend through October 31, 2011, the current OMB clearance for information collection requirements contained in its Negative Option Rule. That clearance expires on October 31, 2008.

**DATES:** Comments must be filed by September 8, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Negative Option Rule: FTC File No. P789003" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the

<sup>8</sup> Based on the National Compensation Survey: Occupational Wages in the United States, June 2006, U.S. Department of Labor, Bureau of Labor Statistics (June 2007) ("BLS National Compensation Survey") (citing the mean hourly earnings for funeral directors as \$22.11/hour), available at <http://www.bls.gov/ncs/ocs/sp/nchl0910.pdf>. As in the past, staff has increased this figure on the assumption that the owner or managing director, who would be paid at a slightly higher rate, would be responsible for making pricing decisions. Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, e.g., bookkeeping, file clerks, new accounts clerks, data entry.

document must be clearly labeled "Confidential."<sup>1</sup>

Comments filed in electronic form should be submitted by using the following Weblink: <https://secure.commentworks.com/ftc-NegativeOptionRule> (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the Weblink: <https://secure.commentworks.com/ftc-NegativeOptionRule>. If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that Web site. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to 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 that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.shtm>.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2984.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501-3520, 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 information collection requirements contained in the Commission's Use of Prenotification Negative Option Plans Rule ("Negative Option Rule" or "Rule"), 16 CFR Part 425 (OMB Control Number 3084-0104).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 8, 2008.

The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers notify subscribers that they will ship merchandise, such as books, compact discs, or tapes, automatically and bill the subscribers for the merchandise if the subscribers do not expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such "negative option" plans.

*Estimated annual hours burden:* 13,000 hours rounded to the nearest thousand.

Staff estimates that approximately 158 existing clubs each require annually about 75 hours to comply with the Rule's disclosure requirements, for a total of 11,850 hours (158 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974, with the result that the burden of compliance has declined over time. Moreover, a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 7 new clubs come into being each year. These clubs require approximately 120 hours to comply

with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 840 hours. Combined with the estimated burden for established clubs, the total burden is 12,690 hours or 13,000, rounded to the nearest thousand.

*Estimated annual cost burden:* \$511,000, rounded to the nearest thousand (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics, the average compensation for advertising managers is approximately \$44 per hour. Compensation for office and administrative support personnel is approximately \$15 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform associated tasks (e.g., placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's paperwork requirements would be approximately \$510,510 [(65 hours managerial time × 158 existing clubs × \$44 per hour) + (10 hours clerical time × 158 existing clubs × \$15 per hour) + (110 hours managerial time × 7 new clubs × \$44 per hour) + (10 hours clerical time × 7 new clubs × \$15)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are de minimis. Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

**William Blumenthal,**  
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<sup>1</sup> FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).