

# **Federal Register**

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**Friday  
September 24, 1982**

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**Part III**

## **Federal Trade Commission**

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**Funeral Industry Practices; Trade  
Regulation Rule**

**FEDERAL TRADE COMMISSION****16 CFR Part 453****Trade Regulation Rule; Funeral Industry Practices****AGENCY:** Federal Trade Commission.**ACTION:** Final Trade Regulation Rule.

**SUMMARY:** The Federal Trade Commission issues a final Rule, the purpose of which is to provide detailed information about prices and legal requirements to persons arranging funerals. The Rule will require disclosure of itemized price information, both over the telephone and in writing; prohibit misrepresentations about legal, crematory and cemetery requirements pertaining to disposition of human remains and prohibit certain unfair practices, such as embalming for a fee without prior permission or requiring consumers to purchase caskets when they intend to cremate the remains, or conditioning the purchase of any funeral goods and services on the purchase of any other funeral goods and services.

This notice contains the Rule's Statement of Basis and Purpose, the text of the Rule and a Regulatory Analysis relating to the final rule.

**EFFECTIVE DATE:** The Rule will become effective three months after the conclusion of Congressional review. The Commission will publish a further notice of effective date in the *Federal Register*.

**ADDRESS:** Requests for copies of the Rule, the Statement of Basis and Purpose, and the Regulatory Analysis should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Erica L. Summers, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3413.

**SUPPLEMENTARY INFORMATION:** This Rule is being submitted to the Congress for review in accordance with Section 21 of the Federal Trade Commission Improvements Act of 1980, 15 U.S.C. 57a-1. Under that section, a Rule becomes effective unless both Houses of Congress disapprove the Rule within 90 calendar days of continuous session after the Rule is submitted. The present legislative review provision is scheduled to terminate on September 30, 1982. Assuming that a new legislative review process will be implemented after that date, the Commission has determined that the Rule should become effective three months after the conclusion of

Congressional review. The Commission will publish a further notice of effective date in the *Federal Register* as soon as possible thereafter.

**List of Subjects in 16 CFR Part 453**

Funeral homes, Price disclosure, Trade practices.

By direction of the Commission, Chairman Miller dissenting.

Dated: September 20, 1982.

Carol M. Thomas,  
*Secretary.***Funeral Rule Statement of Basis and Purpose and Regulatory Analysis***I. Introduction*

*A. Need for and Objectives of Rule.* Arranging a funeral plainly involves emotional, religious, and other important social considerations. At the same time, a funeral is more than a social ritual: it is also an expensive consumer purchase. In fact, the purchase of a funeral is the third largest single expenditure many consumers will ever have to make, after a home and a car. Although funeral costs vary substantially among funeral homes and among different kinds of dispositions and ceremonies, price surveys have found that the average funeral, which includes embalming, viewing, a ceremony with the body present and a procession to the cemetery followed by ground burial, costs the consumer between two and three thousand dollars. In recent years there have been approximately 1.9 million deaths annually, bringing the total amount which consumers spend on funeral and burial arrangements to over \$5.2 billion per year.

While the arrangement of a funeral is clearly an important financial transaction for consumers, it is a unique transaction, one whose characteristics reduce the ability of consumers to make careful, informed purchase decisions. Decisions must often be made while under the emotional strain of bereavement. In addition, consumers lack familiarity with the funeral transaction: close to fifty percent of all consumers have never arranged a funeral before, while another twenty-five percent have done so only once. Further, consumers are called upon to make several important and potentially costly decisions under tight time constraints. Within hours of death, consumers must make arrangements to have the body of the deceased removed from the place of death and taken to a funeral home. Within at most 24 to 48 additional hours all additional decisions must be made concerning the form of disposition desired.

Under any circumstances, giving careful consideration to financial matters while arranging a funeral would be difficult. This difficulty is exacerbated, however, by several practices used by funeral providers which limit the consumer's ability to make informed, independent choices. The evidence indicates that a significant number of funeral providers:

(1) Require that consumers purchase "prepackaged" funerals, which may include goods and services which the consumers would not otherwise purchase;

(2) Misrepresent, either directly or by the failure to disclose material information: (a) that the law requires the purchase of embalming, a casket for cremation services, or grave liners and burial vaults; (b) the extent to which funeral goods and services have a preservative and protective value; and (c) that a mark-up is being charged on items such as flowers and obituary notices, commonly termed "cash advance" items;

(3) Require that consumers who wish to arrange direct cremation services purchase a casket for use in those cremations;

(4) Embalm the body of the deceased without first obtaining specific authorization to do so; and

(5) Refuse to discuss or fail to disclose price information over the telephone.

The Commission has concluded that these acts and practices are unfair or deceptive within the meaning of Section 5 of the Federal Trade Commission Act. Section II of this Statement contains a more detailed description of these acts and practices, as well as a discussion of the frequency with which they occur. The rule promulgated by the Commission prohibits these acts and practices and includes requirements designed to prevent their recurrence. The rule's goal is to lower existing barriers to price competition in the funeral market and to facilitate informed consumer choice. The rule will help achieve these goals by ensuring that: (1) Consumers have access to sufficient information to permit them to make informed decisions about which goods and services they wish to purchase; (2) consumers are not required to purchase goods and services which they do not want and are not required by law to purchase; and (3) misrepresentations are not used to influence consumers' decisions on which goods and services to purchase.

Under the provisions of the rule, funeral providers must give consumers a written list, prior to any arrangements discussion, containing the prices of the

funeral goods and services on an itemized basis. At the choice of the funeral provider, separate price lists may also be used to disclose the prices of caskets and outer burial containers. The rule also requires that funeral providers give price information to consumers who call on the telephone and ask about the terms, conditions, or prices at which funeral goods or services are offered by that funeral home. While the rule requires that price information be given to consumers in a relatively standardized, itemized format, it in no way interferes with the ability of funeral directors to offer their goods and services for sale in additional forms (e.g., funeral packages).

To ensure that funeral consumers have the ability to select only the goods and services they want to purchase, the rule generally requires funeral providers to "unbundle" the goods and services they offer for sale and offer them on an itemized basis. Funeral providers may, however, continue to offer "package funerals" for sale as an alternative to itemized purchasing. The rule simply ensures that the consumer has the ability to make an itemized selection.

In addition to the general right to select goods and services on an individual basis, there are two other related provisions that concern items which funeral providers often have required consumers to purchase. First, the rule requires that funeral providers obtain express permission from a family member or representative before embalming is performed, except under special circumstances. This requirement is designed to ensure that consumers do not have to pay for embalming which they neither asked for nor wanted. Second, the rule prohibits funeral providers from requiring that consumers purchase a casket for use in a direct cremation service. The rule requires funeral providers to offer an unfinished wood box or other alternative to a traditional casket for use in this form of direct disposition.

Finally, the rule prohibits several specifically described misrepresentations concerning legal requirements for burial, or cremation, and misrepresentations about the existence of mark-ups on cash advance items. To implement these prohibitions, the rule requires funeral providers to include several short disclosures on the general price list which they provide to consumers. These disclosures simply inform consumers of their legal rights and purchase options.

The rule also contains a provision which requires the Commission to start a rule amendment proceeding to review the effect and operation of the rule no

later than four years after it becomes effective. This mandatory review will enable the Commission to determine whether the rule has worked as expected and will require the Commission to decide whether the rule should be modified or terminated within eighteen months after the proceeding has started. If the rule has been successful in stimulating price competition by that time, the Commission will decide whether the rule is still needed in light of the marketplace changes. This provision ensures that the Commission will decide whether there is a continuing need for regulation of the funeral industry at an early date and in a proceeding open to public participation.

This overview has highlighted the central elements of the rule. Virtually all of its other provisions, including certain definitions, are designed to ensure the integrity of this disclosure scheme and to prohibit misrepresentations of material information. The rule promulgated today is substantially more limited than that which the Commission originally proposed. These modifications are the result of the Commission's careful consideration of the extensive testimony and comments submitted on three different occasions, as well as Congressionally-mandated limitations (discussed below) on the rule's subject matter. The Commission believes that this rule will effectively curb many of the unfair or deceptive practices identified in the rulemaking record with minimal intrusion into the business operations of funeral providers.

**B. History of the Proceeding.** In December of 1972, at the direction of the Commission, the Commission's Bureau of Consumer Protection began an initial investigation of practices in the funeral industry.<sup>1</sup> During the initial investigation, the Commission's staff interviewed consumers, funeral directors, memorial society members, attorneys, state officials and others, and also visited funeral homes. These efforts

<sup>1</sup> The proposal for a limited initial investigation stemmed from an internal staff analysis suggesting a potential for abuse in the funeral transaction, given the unique disadvantages of the funeral purchaser. While few consumer complaints had been received at the time, the potential for consumer injury had been documented by hearings chaired by Senator Phillip Hart in 1964. *Antitrust Aspects of the Funeral Industry: Hearings Pursuant to S.R. 262 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 88th Cong., 2d Sess. (1964) (hereinafter cited as *Antitrust and Monopoly Subcomm. Hearings*). This policy planning approach to identifying areas of potential consumer injury was a direct response to criticism made by the American Bar Association in the late 1960s that the Commission relied too heavily on consumer complaints and consequently chose trivial cases for investigation.

led the staff to conclude that a more detailed examination of the industry's practices was warranted. The staff made this recommendation in June, 1973, in a 239 page planning report to the Commission.<sup>2</sup> The Commission subsequently approved a full industry-wide investigation and authorized the use of compulsory process.

An Initial Staff Report by the staff of the Bureau of Consumer Protection based on the industry-wide investigation was published in August, 1975. In that report, the staff recommended that the Commission initiate a rulemaking proceeding pursuant to its authority under Sections 5 and 18 of the Federal Trade Commission Act.<sup>3</sup> The Initial Staff Report described practices relating to the purchase of funeral goods and services which may have violated Section 5 of the Act.

After reviewing the Initial Staff Report, the Commission published an Initial Notice of Proposed Rulemaking ("Initial Notice") on August 29, 1975.<sup>4</sup> It contained the text of a proposed rule, a statement of the Commission's reasons for issuing it, and an invitation to comment on the proposal.

Written comments on the Initial Notice were received through March 6, 1976. More than 9,000 separate documents were received, comprising approximately 20,000 pages. Numerous comments were made by individual funeral industry members, state and national funeral trade associations, individual consumers, consumer groups, state regulatory boards, state and local government officials, representatives of funeral-related industries including florists, cemetery operators, and casket and vault manufacturers, memorial societies, clergymen, academics, and other interested parties.

On February 20, 1976, the Final Notice of Rulemaking ("Final Notice") was published by the Presiding Officer in the funeral proceeding.<sup>5</sup> The Final Notice set out thirty disputed issues of fact to serve as the focus for the public hearings on the proposed rule.<sup>6</sup> Public hearings were

<sup>2</sup> Division of Evaluation, Bureau of Consumer Protection, *Unfair Practices in the Funeral Industry: A Planning Report to the Federal Trade Commission*, June 29, 1973.

<sup>3</sup> 15 U.S.C. 45, 57.

<sup>4</sup> 40 FR 39901 (1975).

<sup>5</sup> 41 FR 7787 (1976).

<sup>6</sup> Prior to the hearings, the National Funeral Directors Association sought to enjoin the hearings in federal court, alleging a number of procedural improprieties and Commission action in excess of its statutory authority. The court denied the injunction. *NFDA v. FTC*, 76-0615 (D.D.C., filed April 14, 1976).

