

FUNERAL INDUSTRY PRACTICES

Proposed Trade Regulation Rule

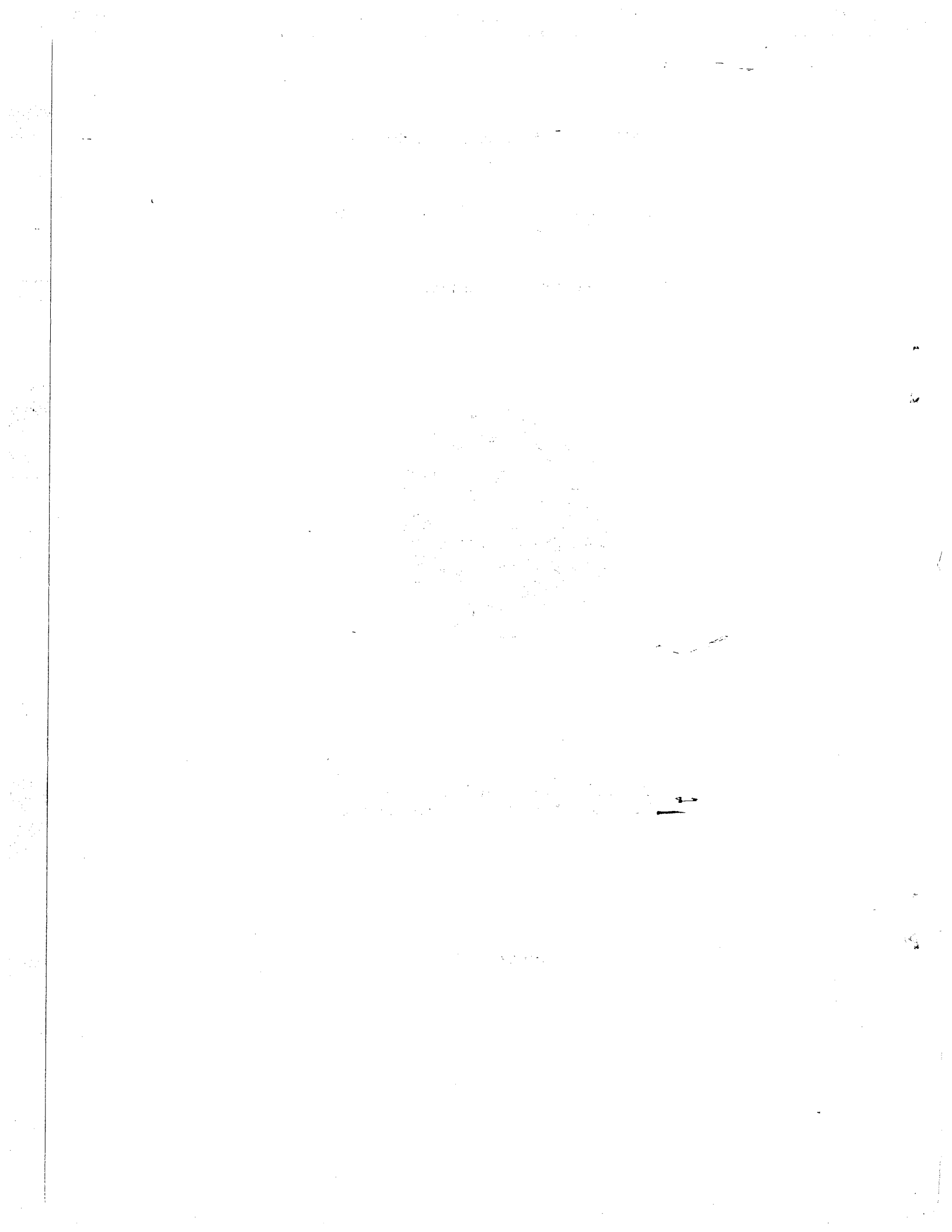
and

Staff Memorandum



Division of Special Projects
Bureau of Consumer Protection

August, 1975



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This memorandum was prepared by the staff of the Commission's Bureau of Consumer Protection, Division of Special Projects. The Commission has not adopted any findings or conclusions of the staff.

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UNITED STATES GOVERNMENT

Memorandum

TO : Commission

DATE: August 20, 1975

FROM : Division of Special Projects
Bureau of Consumer Protection

SUBJECT: Funeral Industry - File 732 3057 (Program I-12)
Proposed Trade Regulation Rule

INTRODUCTION

This memorandum supports the Funeral Industry Practices Trade Regulation Rule which has been proposed to correct the unfair and deceptive practices identified in the course of the staff's investigation. These abuses are industry-wide, and staff is convinced that a Trade Regulation Rule is the most direct and efficient way to eliminate them.

The staff formally proposed the funeral investigation to the Commission in July, 1973 after several months of preliminary investigation into industry conditions and consumer abuses. Staff's 239 page planning memo to the Commission 1/ described, in considerable detail, the industry and a number of consumer problems, and forms part of the basis for the rule we are proposing.

Following Commission approval of the formal industry-wide investigation, the staff initiated, in October, 1973 a pilot funeral price survey in the District of Columbia, the results of which were released in February, 1974. The D.C. survey was the first systematic effort to get hard data on funeral prices and practices in a particular area, and to make that data available to the public. ~~The D.C. survey~~ produced much useful information. 2/ It also inspired a number of similar surveys all over the country--by state and

1/ Division of Evaluation, Bureau of Consumer Protection, Unfair Practices in the Funeral Industry: A Planning Report to the Federal Trade Commission, June 29, 1973 [hereinafter cited as F.T.C. Funeral Investigation Planning Memo].

2/ DIVISION OF SPECIAL PROJECTS, BUREAU OF CONSUMER PROTECTION, U.S. FED. TRADE COMM'N, SURVEY OF FUNERAL PRICES IN THE DISTRICT OF COLUMBIA (1974) [hereinafter cited as D.C. FUNERAL SURVEY].



local governments, 3/ consumer groups, 4/ and newspapers 5/ -- which have likewise yielded valuable data.

In addition to the price survey, the staff has obtained information from funeral directors, visits to funeral homes, industry employees and ex-employees, casket manufacturers, memorial society members, consumer interviews and complaint letters, trade journals, scholarly papers, and magazine and newspaper articles.

The information gathered by the investigation confirms the view expressed in our initial report that there are many serious abuses of consumers by large numbers of the nation's 22,000 funeral homes 6/ and consequently an urgent need exists for remedial action by the Commission.

Each year, millions of families are forced by the death of a relative 7/ to make one of the largest consumer

3/ E.g., Arkansas; Delaware; Florida; Iowa City, Iowa; Massachusetts; Minnesota; and Syracuse, New York.

4/ E.g., Indiana Public Interest Research Group; New York Public Interest Research Group; Consumer Action of Kansas City, Missouri.

5/ Newspaper surveys have been conducted by the San Bernadino Sun-Telegraph, San Bernadino, CA; St. Petersburg Times, St. Petersburg, FL; The Cincinnati Enquirer, Cincinnati, OH; The Louisville Courier-Journal, Louisville, KY; and the Northern Virginia News, Vienna, VA.

6/ The precise number of funeral establishments is not entirely clear. The most recent figures from the Department of Commerce, Social and Economic Statistics Administration indicate that there were 20,854 funeral service and crematory establishments operating in 1972. U.S. DEP'T OF COMMERCE, SUMMARY REPORT OF THE 1972 CENSUS OF SELECTED SERVICE INDUSTRIES. The industry's largest trade association, the National Funeral Directors Association has used the figure 22,500. NATIONAL FUNERAL DIRECTORS ASSOCIATION, FUNERAL SERVICE 13 (1974). The Labor Department has quoted a figure of 23,000 and has calculated that there were 45,000 licensed funeral directors and embalmers in 1972. U.S. DEP'T OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK 174 (1974-75).

7/ There were 1,977,000 deaths in the United States in 1973. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S., 51 (1974).

purchases, 8/ under severe handicaps of time pressures, emotional distress and lack of information or experience. 9/ As an FTC hearing examiner noted long ago, there are few, if any industries where the ultimate consumer is so disadvantaged or where his normal bargaining power is so diluted in a situation of such immediate need. 10/

The need for protections for funeral buyers is particularly acute because the funeral director plays two conflicting roles. His public relations image emphasizes his duties as a professional serving people at a time of particular desperation. His economic self-interest puts him in a different role: he is a salesman of goods and services to these same people; and, if he wants to prosper or even to survive, he must move his high profit lines.

This conflict is exacerbated because the image of disinterested professionalism makes the funeral director a more effective merchandiser. The more the public accepts the professional role, the less it will inquire, shop, or bargain, and the greater the opportunity for high mark-ups,

8/ Based on the D.C. funeral survey and similar surveys across the country, consumers pay funeral directors an average of \$1100 to \$1400. Cemetery and related expenses bring the average total for funeral and burial expenses to approximately \$2000. See sources cited in notes 2-5, supra; FFDA Statistical Survey Shows Few Ratio Changes, AMERICAN FUNERAL DIRECTOR 22 (July, 1975) (1974 average funeral director charge of \$1287).

Gross receipts for funeral homes and crematories have been estimated at \$1.91 billion for 1973, \$2.00 billion for 1974, \$2.12 billion for 1975, and are projected to reach \$2.80 billion by 1980. U.S. DEP'T OF COMMERCE, U.S. INDUSTRIAL OUTLOOK WITH PROJECTIONS TO 1980, 480 (1975).

Outlays for items such as flowers (approximately \$800 million, annually), cemetery expenses (approximately \$735 million, annually), monuments and markers (approximately \$450 million, annually), and burial vaults (approximately \$305 million, annually), bring the total annual expenditures for funeral related items to approximately \$4.2 billion. See MEDIA AND CONSUMER 14 (June, 1974).

9/ The disadvantaged position of the consumer in the funeral transaction was discussed, in detail, in the planning memorandum at 64-78. See note 1 supra.

10/ See In re Casket Mfrs. Assn., 52 F.T.C. 958, 971 (1954).

unnecessary services and unscrupulous practices. Consequently, the industry tends to promote the professional image and fight anything that would interfere with it or that would permit other than disinterested organizations to come between it and the consumer. The industry is well organized in terms of state boards of regulation and trade associations 11/ and uses its advantages to limit price disclosure, low cost disposition, pre-need arrangements, and price advertising, all in the name, of course, of professional ethics and good practice.

Once the consumer comes to the funeral home, a number of sales techniques of varying unsavoriness are used to increase the amount he spends. Some of these methods are common to many industries, and normally we rely on the forces of competition and the good sense of consumers to punish those who use them and reward those who do not. This does not work for funerals because the bereaved purchaser is not emotionally able to bargain 12/ and is seldom even aware that he is being deceived or exploited.

The nature of the funeral transaction and the incentives operating in the industry have been discussed extensively in prior memoranda, and need not be reiterated in detail here. It is enough to say that the general marketing strategy of much of the industry seems to follow the following precepts:

1. Eliminate low cost alternatives to the standard funeral through control of laws, regulations, and codes of ethics.
2. Use of any means possible - laws and regulations, propaganda, refusal to deal - to stunt the development of memorial societies or pre-need societies which can bargain on behalf of the customer in a non-emotional context.
3. Make it as difficult as possible for the consumer to obtain price information in advance of need or without coming to the funeral home.

11/ The anticipated argument that the Commission should not take action against abuses because of the presence of state regulatory boards is particularly hollow in the case of the funeral industry. See F.T.C. Funeral Investigation Planning Memo 17-30. One particularly revealing illustration is the fact that the general counsel (an active policy-maker) for the industry's largest trade association, NFDA, is also the general counsel to the conference of state regulatory boards, which proposes state regulations.

12/ Moreover, once the body is in the hands of a funeral director, the consumer is unlikely to take his business elsewhere.

