

**FEDERAL TRADE COMMISSION**

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**REPORT OF THE PRESIDING OFFICER ON  
A TRADE REGULATION RULE PROCEEDING:****REVIEW OF THE FUNERAL INDUSTRY PRACTICES TRADE  
REGULATION RULE****16 CFR PART 453****Public Record (215-66)****R011004**

This report required by 16 CFR 1.13(f) of the Commission's Rules of Practice contains the Presiding Officer's recommended decision based upon his findings and conclusions as to the relevant and material evidence in the rulemaking record. It has not been reviewed or approved by the Commission or the Bureau of Consumer Protection.

**HENRY B. CABELL  
PRESIDING OFFICER****JULY 1990**

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of  
REVIEW OF THE FUNERAL INDUSTRY  
PRACTICES TRADE REGULATION RULE  
16 C.F.R. 453

PUBLIC RECORD  
NO. 215-66

RECOMMENDED DECISION OF THE PRESIDING OFFICER

by Henry B. Cabell, Presiding Officer

I. INTRODUCTION

A. Preliminary matters. This proceeding was mandated by section 453.10 of the Funeral Industry Practices Trade Regulation Rule (the Funeral Rule or Rule) which provides that the Federal Trade Commission (FTC) shall initiate a rulemaking amendment proceeding four years after the effective date of the Rule to determine whether the Rule should remain in effect unchanged, or should be amended or repealed.<sup>1</sup> Pursuant to that provision the Commission published its Notice of Proposed Rulemaking for this proceeding in the Federal Register on May 31, 1988.<sup>2</sup>

In Section A of the notice of proposed rulemaking (NPR) the Commission set forth its reasons for initiating this proceeding and described the preliminary work of its staff in gathering

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<sup>1</sup>The provisions of the Rule which prohibit certain oral or written representations became effective on January 1, 1984, 48 Fed. Reg. 45537, October 6, 1983. The remaining provisions of the Rule became effective April 30, 1984, 49 Fed. Reg. 564, January 5, 1984.

<sup>2</sup>53 Fed. Reg. 19864.

information and preparing for it. In Section B of the NPR interested persons were invited to submit comments on the Rule; and in Section C, the Commission set out a list of 18 questions on which it particularly desired comment.

Following publication of the NPR a rulemaking record was established. The organization and contents of this record are described in Appendix A of this report. This rulemaking record is separate and distinct from the rulemaking record established and used in the original proceeding on this Rule.<sup>3</sup>

In this report references to a document contained in the rulemaking record show the category in which the document was placed, the number of the document, and the internal page number of the document on which the referenced material appears. For example, a citation to material contained in a written comment filed in Category F might read as follows: R-F-16 at 4. References to the transcripts of the testimony taken at the public hearings are cited to volume numbers as well as to page numbers. The volume numbers represent testimony taken at the various hearings. Those in Washington, D.C., are

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<sup>3</sup>Public Record No. 215-46. This separation of the old record from the new was intended primarily to insure that the rulemaking record for this proceeding would not contain duplicative or outdated material. This action was in conformity with the instructions contained in Section H of the NPR and section 1.18(a) of the Commission's Rules of Practice. 16 C.F.R. 1.18(a). All of the material in the previous record continues to be available to interested persons and the public.

designated as Volume I, those in Chicago, Volume II, and those in San Francisco, Volume III.

The rulemaking record in this proceeding on the date of this decision contains slightly more than 16,000 pages, consisting of written materials submitted by the Commission Staff, written comment submitted by the public, members of the affected businesses, and others having an interest in the proceeding. The record also includes transcripts of the testimony of the 83 witnesses who testified and presented exhibits at the hearings.<sup>4</sup> Written rebuttal submissions of interested persons and proposed findings of fact, conclusions, and recommended decision were filed and included in the rulemaking record.

Based on information contained in the notifications of interest filed by interested parties, the Presiding Officer designated four groups of persons having the same or similar interests. These were: Group 1, the Consumer Interest Group; Group 2, the Funeral Director Group; Group 3, the Crematory and Prearrangement Group; and Group 4, the Special Cemetery Group.<sup>5</sup> Each of these groups selected representatives to conduct examinations of witnesses on behalf of their respective groups. Members of the Commission Staff also examined witnesses.

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<sup>4</sup>These witnesses included funeral directors, operators of cemeteries and crematories, monument builders, industry consultants, state officials, consumer advocates and counselors, economists, and survey experts. Representatives of these same groups submitted written comments and materials.

<sup>5</sup>Presiding Officer's Order No. 1, September 15, 1988, R-A-37.

At the conclusion of the hearings, the Presiding Officer invited the group representatives to include in their rebuttal submissions proposed findings of fact, conclusions, and recommended decision based upon all relevant and material evidence in the rulemaking record.<sup>6</sup> All of the groups took advantage of this opportunity, and their submissions are included in Category M of the rulemaking record. These documents proved to be extremely helpful to both the staff and the Presiding Officer in the preparation of their respective reports.

B. The Funeral Rule.

1. Price disclosures. The Rule declares it to be an unfair or deceptive act or practice for a funeral provider (defined in §453.1(i) as one who sells funeral goods and services) to fail to furnish specific price information to funeral consumers. The following five price disclosures are required in section 453.2 of the Rule:

a. The funeral provider must inform persons who ask by telephone about the terms, conditions, or prices of funeral goods or services, that price information is available over the telephone and, upon request, provide them with price information which reasonably answers their queries.

b. A funeral provider must furnish a written price list to those who inquire in person about the offerings or prices of caskets or alternative containers.

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<sup>6</sup>Presiding Officer's Order No. 4, January 26, 1989. R-A-63.

c. A funeral provider must give a consumer who inquires about the offerings or prices of an outer burial container a written price list showing the prices of the containers offered.<sup>7</sup>

d. When consumers inquire in person about funeral arrangements or the prices of funeral goods and services, the provider must offer them a written general price list upon beginning a discussion either of the arrangements or selection of goods or services. This list must contain itemized prices for 17 specified goods and services.

e. At the conclusion of the arrangement discussions, the funeral provider must give the consumer an itemized statement showing the goods and services selected, an itemization of cash advance purchases, and the total costs of the goods and services purchased.

2. Misrepresentations. Section 453.3 of the Rule defines six acts or practices as being unfair or deceptive. In addition it prescribes a series of requirements designed to prevent the use of the proscribed acts or practices.

a. Embalming. Funeral providers may not misrepresent the legal requirements for embalming, and they must disclose that embalming is not required by law except in certain cases. Preventive requirements are that a funeral provider may not misrepresent when embalming is required and an affirmative

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<sup>7</sup>The casket and outer burial container price lists may be incorporated in the general price list.