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**MANDATORY REVIEW OF THE FUNERAL INDUSTRY  
PRACTICES TRADE REGULATION RULE  
(16 CFR Part 453)**

**STAFF REPORT TO THE FEDERAL TRADE COMMISSION**



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**BUREAU OF CONSUMER PROTECTION**

**APRIL 1988**

**MANDATORY REVIEW OF THE FUNERAL INDUSTRY  
PRACTICES TRADE REGULATION RULE  
(16 CFR Part 453)**

**Staff Report to the Federal Trade Commission**

**Bureau of Consumer Protection**

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In this report, staff presents the evidence it has gathered to date on the effects of the Funeral Industry Practices Trade Regulation Rule, 16 CFR Part 453, and recommends that the Commission issue a Notice of Proposed Rulemaking to initiate the review proceeding mandated by § 453.10 of the Funeral Rule. Staff recommends that the Notice leave all of the Rule's requirements open to reexamination during the rulemaking amendment proceeding. The Commission has not adopted any of the findings or conclusions presented in this report.

**APRIL 1988**

## ACKNOWLEDGEMENTS

The staff wishes to gratefully acknowledge the valuable assistance provided by a number of individuals in the preparation of this report.

Jack Crowley and Denise Ottie (and her staff in the Computer Information Center) provided invaluable assistance with the computer database used for the report; their individual efforts seriously question the theory that computer technology may be too complex to be understood by any one lay person.

Gwen Williams and Denise Owens performed a variety of necessary secretarial tasks under severe time constraints that helped ensure the orderly flow of work through innumerable drafts, with speed and diligence. We thank them for their considerable patience and perseverance.

Carol Jennings (Division of Marketing Practices), Tim Daniel (Bureau of Economics) and Tom Maronick (Office of Impact Evaluation) performed with great speed and ability many tasks at our request, including the review and generation of supporting documents and survey data, and answered in simple terms many complex questions about Rule enforcement, economic and statistical topics.

Charles Lane and student law clerk Tom Giblin at our request obtained and analyzed with great diligence current state law regulating funeral industry practice; Mr. Giblin and student clerk John Adair also ably assisted in the analysis of written comments submitted in response to the Advance Notice of Proposed Rulemaking.

**TABLE OF CONTENTS**

INTRODUCTION AND SUMMARY . . . . . 1

I. Background . . . . . 6

    A. The Funeral Rule . . . . . 6

        1. Requirements . . . . . 6

        2. Objectives . . . . . 7

    B. History Of The Funeral Rule Proceeding . . . . . 9

    C. Commission Efforts to Encourage Rule Compliance . . 11

    D. The Baseline Study . . . . . 13

    E. The Applicable Standard For Repeal Or Modification 19

    F. Trends In The Funeral Industry . . . . . 23

        1. Consolidation . . . . . 23

        2. Growth of Pre-need . . . . . 24

            a. Background . . . . . 24

            b. Complications . . . . . 26

        3. Cremation . . . . . 27

            a. Background . . . . . 27

            b. Project Understanding . . . . . 29

II. Evidence on the Funeral Market . . . . . 33

    A. The Replication Study . . . . . 33

        1. Purpose and Design . . . . . 34

        2. Overall Results . . . . . 37

            a. Consumer Shopping . . . . . 38

            b. Consumer Purchase Behavior . . . . . 40

            c. Consumer Knowledge . . . . . 42

            d. Consumer Expenditures and Funeral Prices . 44

## INTRODUCTION AND SUMMARY

This memorandum contains staff's recommendations for initiating the rulemaking amendment proceeding mandated by § 453.10 of the Funeral Rule. The purpose of this unique provision was to determine, through an early review, whether there is a need to continue the Rule after it has had a fair opportunity to correct the industry problems it was adopted to remedy. The Commission in its Statement of Basis and Purpose for the Funeral Rule ("SBP") recognized that the Rule's effects may be evidenced more slowly than in other industries.<sup>1</sup> Nonetheless, the Commission determined that an early review was necessary to consider whether the Rule appears to be working as expected in reducing barriers to price competition and increasing consumer choice, whether some modification is necessary to facilitate those benefits, and whether repeal is warranted as a result of substantially reduced marketplace problems.

The staff in preparing for this amendment proceeding has collected and reviewed evidence from three primary sources: (1) two national mail-panel surveys of funeral purchasers (a 1981 "baseline" study and a 1987 "replication" study); (2) a survey of current state laws regulating the funeral transaction; and (3) public comments submitted in response to the Advance Notice of Proposed Rulemaking ("ANPR") issued by the Commission on December

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<sup>1</sup> 47 Fed. Reg. 42260, 42299 (September 24, 1982).

survey and analytical results further suggest that: (1) consumers who receive "compliant" treatment from their funeral provider do not spend less on their funeral arrangements; (2) consumers who receive the Rule-required price lists spend no less on funerals; (3) the proportion of consumers receiving some form of price information early in their meetings with providers has increased, and those consumers spend significantly less on funeral arrangements; and (4) funeral provider misrepresentations have decreased to a small extent and consumer knowledge about funeral requirements and about funeral goods and services has increased to a small extent.

While some of the data summarized above may raise questions about the benefits of the Rule, the available data also suggest that overall compliance with the Rule is mixed at best. Of course, we would not expect 100% compliance under any circumstances. And the survey results may misstate actual compliance due to inaccurate consumer recall. However, as a part of the Commission's assessment of whether the Rule warrants retention or repeal, the Commission will need to examine the degree to which the Rule is sufficiently in place in the market. That is, are enough providers substantially complying with the Rule's requirements to permit accurate judgments about the Rule's effects on consumer and industry behavior in the funeral market? Thus, two important issues for consideration during the rulemaking proceeding will be whether the 1987 consumer survey results accurately reflect the actual level of industry

rulemaking proceeding to help determine whether they need to be modified or warrant retention or repeal.

On the other hand, the currently available survey data and other information could be read to provide some support for retention of the Rule's basic telephone disclosure (requiring providers to answer price inquiries), casket or embalming for cremation, and misrepresentation provisions that prohibit practices identified by the Commission as deceptive or unfair. In addition, our review of the Rule itself and of the ANPR comments indicates that the rulemaking should include consideration of several technical language changes that may be necessary to clarify the Rule's scope and requirements.

We do not at this time propose specific changes or make specific recommendations for retention or repeal in any of these areas. We instead believe that the best and most objective course at this point is to leave all of the current Rule provisions open to debate and inquiry, and, in addition, to focus concern on specific provisions, and on the available evidence relating to those provisions, through questions for comment in the NPRM.

The remainder of this memorandum contains the staff's report on the Funeral Rule Review and recommendations for publishing the NPRM and the consumer survey report. Section I provides a discussion of the Rule, its history, enforcement and presumptive validity, the 1981 baseline study, and changes in the funeral industry. In Section II, staff presents the summary statistics

Essentially, the Funeral Rule requires funeral providers to: (1) disclose prices, available options and other information in person and over the telephone; (2) make truthful representations regarding legal and other requirements; (3) permit consumers to select and purchase only those goods and services they desire; (4) obtain express permission before embalming the deceased for a fee; (5) refrain from misrepresenting the protective and preservative value of funeral goods and services; and (6) disclose whether they charge a fee for arranging cash advance purchases.

A unique feature of the Funeral Rule is its requirement that the Commission initiate a rulemaking amendment proceeding four years after the effective date of the Rule. This provision, set forth in Section 453.10 of the Rule, states:

No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(B) [of the FTC Act] to determine whether the rule should be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceeding.

## 2. Objectives

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<sup>4</sup> The Funeral Rule had two effective dates. Those portions of the Funeral Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 Fed. Reg. 45537 (Oct. 6, 1983). The remainder of the Rule -- the portions that impose affirmative obligations on funeral providers -- became effective April 30, 1984. *Id.*

N.B. The effective date of § 453.3(b)(1)(ii) of the Rule was changed from January 1, 1984, to April 30, 1984. 49 FR 564 (Jan. 5, 1984).

## B. History of the Funeral Rule Proceeding

The Bureau of Consumer Protection began an initial investigation of the practices of the funeral industry in December 1972.<sup>12</sup> Following that investigation, the Commission issued an Initial Notice of Proposed Rulemaking in August 1975.<sup>13</sup> After receipt and analysis of written comments, the Commission issued the Final Notice of Proposed Rulemaking in February 1976. This document identified thirty disputed issues of fact. Hearings were held from April 20, 1976, to August 6, 1976.<sup>14</sup> The Presiding Officer and the staff provided the Commission with written reports on the hearings.

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<sup>12</sup> See SBP at 42261.

<sup>13</sup> The staff proposed that the Commission issue a rule more stringent than the current Funeral Rule. For example, the proposed rule prohibited: (1) embalming without prior permission, unless required by law, (2) unauthorized removal of the deceased remains, (3) refusal to release remains to a family member or other authorized person (whether or not money is owed for services rendered), (4) charging any markup on or profiting from cash advance items, and required funeral providers to: (1) give a brief written statement of legal requirements including health regulations upon request, (2) disclose that caskets are available in colors other than those displayed, (3) display the three least expensive caskets in the same general manner as other caskets are displayed, (4) keep arrangements statements for three years, and (5) disclose on the arrangements statement that the consumer has read and understood the document and has received written information on caskets and other merchandise. The current Rule prohibits embalming for a fee without prior permission, unless the provider has made a diligent effort to obtain permission, requires the holding of statements for only one year and permits providers to profit from arranging cash advance purchases so long as the existence of a markup is disclosed.

<sup>14</sup> The hearings were held in Atlanta, Chicago, Los Angeles, New York, Seattle and Washington, D.C. In all, 52 days were consumed. The hearings generated 14,719 pages of transcript, 4,000 exhibits and involved 315 witnesses.

description of the unfair or deceptive acts or practices that are remedied by the rule. In several provisions of the tentatively adopted rule this had not been done. Accordingly, the Commission directed the staff to conform the tentative rule to the statute.

On December 17, 1980 the Commission met to consider a revised rule and voted to publish it for comment. The Commission subsequently promulgated the present Funeral Rule on September 24, 1982.<sup>16</sup> The Rule became fully effective on April 30, 1984.<sup>17</sup>

C. Commission Efforts to Encourage Rule Compliance

Since the Funeral Rule was promulgated in 1982, the staff has been educating the industry and consumers regarding the requirements of the Funeral Rule. These efforts have included: (1) publishing compliance guidelines, model price lists, a consumer guide to the Funeral Rule and an audio-video public service announcement; (2) reviewing hundreds of price lists for individual funeral providers, trade associations, printing companies and other interested parties; (3) drafting hundreds of staff opinion letters on a profusion of compliance issues; (4) participating in compliance seminars, trade conventions, consumer fairs and news programs to explain the Rule.<sup>18</sup>

As is customary with new rules, the staff initially concentrated on educational efforts to bring about compliance

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<sup>16</sup> Supra note 1.

<sup>17</sup> Supra note 4.

<sup>18</sup> The staff also mailed advisory letters to many funeral providers that were identified as not having forms or having inadequate forms.