



National Funeral Directors Association  
\*Informs \*Educates \*Advocates

## **2011 POLICY**

### **INITIATE OR SUPPORT FEDERAL REGULATION OF ALL SELLERS OF FUNERAL AND/OR FINAL DISPOSITION GOODS OR SERVICES NOT NOW COVERED BY THE FUNERAL RULE**

#### **NFDA Position**

That NFDA work with Congress and/or the FTC to adopt legislation or rules to regulate any entity or individual that sells or offers to sell funeral and/or final disposition goods, or services to the public and who are not now covered by the Funeral Rule.

#### **Background**

In 1984, the Federal Trade Commission (FTC) issued the Funeral Rule that transformed the general business practices of the profession. It remains one of the most comprehensive industry rulemakings in U.S. history. Spawned in the big government era of active consumerism, the Funeral Rule was designed to rid funeral service of so-called deceptive and unfair practices. For the most part, the rule has accomplished its objective. However, as with most government regulatory efforts, it overreached. Not only does it proscribe certain practices; it also details exactly what a funeral director can do rather than leaving that to the natural competitive forces of the marketplace and good business practices. The Funeral Rule was amended in 1994 to update it relative to current marketplace activities. However, by virtue of its definition, the rule only applies to those who sell both funeral goods and services to the public (essentially funeral directors and funeral homes) and not to casket retailers, cemeteries, crematories or other third party merchandise, product or service sellers. They remain unregulated at the federal level and in most states.

#### **Discussion**

For funeral directors, the Funeral Rule has been both a bane and a boon. It has forced many to reexamine their pricing and how they market themselves to the public. For the most part, this process has been beneficial. In addition, the rule has improved the public image of funeral directors giving the consumer more confidence in their dealings with them. Further, the rule has forged a good working relationship between NFDA and the FTC that has led to the creation of the FROP program and other consumer-oriented efforts. On the negative side, its enforcement has been haphazard and uneven and continues to paint a skeptical public image of funeral service. However, the real problem with the rule from NFDA's perspective is that it does not recognize the new reality of the marketplace - cemeteries and other third-party sellers are now offering funeral and/or final disposition related merchandise and services to the public in a largely unregulated environment. This clearly does not serve the best interests of consumers. If

the original intent of the Funeral Rule is still valid, that is, to protect consumers from unfair and deceptive practices, then anyone offering funeral and/or final disposition related merchandise or services to the public should be subject to a similar Federal Rule designed specifically for those entities and their practices.

In 2008, the FTC officially closed its review of the Funeral Rule which it began in 1999 with a recommendation that no changes be made to the current rule. It is clear by this decision and in subsequent discussions with the FTC staff that they do not believe regulating other entities under the Funeral Rule would work or would be appropriate. Therefore any efforts to that end would be fruitless.

In 2010, NFDA continued its efforts to support Congressional and/or FTC efforts to enact a Federal Rule to cover all sellers of funeral and/or final disposition goods or services to the public who are not now covered by the funeral rule. In that regard, Rep. Bobby Rush (D-ILL) introduced legislation, H.R. 3655, to require the FTC to initiate a federal rulemaking to regulate cemeteries and all others who sell funeral and/or final disposition goods or services to the public and who are not now covered by the Funeral Rule. NFDA strongly supported H.R. 3655 and worked closely with Rep. Rush and any all interested funeral service organizations and consumer groups to get it passed in 2010. However, time ran out on our efforts and we were unsuccessful in getting it passed.

With the change in party control of the House and Committee Chairmen, it will be much more difficult to get this bill passed in the 112<sup>th</sup> Congress. However, NFDA will work hard to get it introduced and garner bipartisan and bi-cameral support for the bill to get it passed.

**NFDA Governance History:**

2010: Committee Action 1/20/10; Policy Board Action 3/08/10

2011: Committee Action 1/27/11; Policy Board Action 3/09/11

Attest: NFDA Policy Board (original resolution)      Date: March 08, 2010      File Code: RES093/Policybd