



October 24, 2011

Richard C. Donohue, Acting Secretary  
Federal Trade Commission  
Office of the Secretary  
Room H-113 (Annex G)  
600 Pennsylvania Ave., NW.  
Washington, D.C. 20580

**Re: Magnuson-Moss Warranty Act Rule Review, 16 CFR Part 700, P114406**

Dear Secretary Donohue:

On behalf of its members, the Service Contract Industry Council (SCIC) appreciates the opportunity to respond to the Federal Trade Commission's (FTC) request for comment on the interpretations, rules, and guides to the Magnuson-Moss Warranty Act. By way of background, the SCIC is a national trade association whose member companies include insurers, manufacturers, service contract providers, administrators and retailers offering service contracts covering motor vehicles, homes and consumer goods throughout the country. The SCIC's member companies, which include Ford Motor Company, Ally Insurance (formerly GMAC Insurance Holdings), BMW Financial Services, Chrysler Group, Toyota Motor Insurance Services, American Home Shield, Best Buy, CNA National Warranty Co., and National Electronics Warranty, offer over 80% of the service contracts available in the marketplace today.

The Magnuson-Moss Warranty Act defines a "service contract" as a "contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product." Unlike a warranty, which is conveyed as part of the purchase of a product, a service contract is sold separately from the covered product and for consideration separate and apart from the price of the product. Consumers choose whether or not to purchase service contracts, and the service contract industry has responded to the needs of consumers by making available for purchase a broad array of sought after service contract products which provide valuable protection for a consumer's investment in goods purchased. Although the Magnuson-Moss Act defines a service contract, the disclosures required by the Act do not apply to service contracts.

Since its inception in 1987, the SCIC has worked extensively with state insurance regulators and state legislatures to enact legislation implementing a regulatory framework for the offering of service contracts that is based upon a Model Act which was adopted by the National Association of Insurance Commissioners (NAIC) in 1995. A copy of the Industry Model Act

which contains significant enhancements to the NAIC model adopted in 1995 is attached for your reference as Exhibit A. This model language serves as the foundation for state legislatures and the SCIC when it pursues legislation in a state to create a regulatory framework for the service contract industry. To date, there are thirty-five states that specifically regulate the offering of service contracts on consumer goods, thirty-five states that specifically regulate the offering of service contracts on homes, and thirty-eight states that specifically regulate the offering of service contracts on motor vehicles. In addition, there are several states which regulate these contracts as insurance when a party other than someone in the chain of commerce of the covered product is obligated to perform and others that regulate the contracts as insurance regardless of who is obligated thereunder. Finally, there are a group of states which have enacted legislation which defines what a service contract is and expressly exempts such contracts from regulation as insurance thereby subjecting the Industry to regulation under the state's general consumer protection laws. As you can see, the Industry is subject to extensive regulation across the country.

Generally, the laws in place in the states that have established a regulatory framework governing the Industry address the following core concepts: licensure or registration of service contract obligors; service contract obligor minimum net worth; service contract obligor financial responsibility; service contract content and required disclosures; consumer cancellation and refund rights; recordkeeping; prohibited conduct; penalties for failure to comply with applicable law; and enforcement and oversight. Typically the enforcement and oversight of the Industry is placed with the insurance regulator in a given state.

The request for comment seeks input as to whether the interpretations, rules, and guides to the Magnuson-Moss Warranty Act should be amended to address service contracts. The SCIC's position is that the interpretations, rules, and/or guides should not be amended to specifically address service contracts. The reason for this position is that the various state regulation of the Industry, as described in detail above, has proven effective in protecting consumers while fostering the growth of the Industry, and to create an overlay of federal regulation to an already existing state regulatory scheme would create unnecessary burdens and expense to both the Industry and to federal and state governments with little or no added protection for consumers.

The Magnuson-Moss Act preempts state warranty law unless the state law "affords protection to consumers greater than the requirements of [Magnuson-Moss] and does not unduly burden interstate commerce." Most state service contract laws currently provide greater protection to consumers than the requirements contained in the Magnuson-Moss Act as state laws regulating the Industry address more than just disclosure requirements by ensuring that service contract obligors are financially sound and that their obligations to consumers are secure. Accordingly, amending the interpretations, rules, and guides to include service contracts would have little, if any, substantive effect on service contract regulation in most states, as the existing state law would still apply in most cases since those laws clearly provide greater protection to consumers than the protections provided by the Magnuson-Moss Act.

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Amending the interpretations, rules, and guides to address service contracts would require the FTC to spend significant time and energy to little practical effect. The substantive provisions of the Magnuson-Moss Act properly apply only to warranties, not service contracts. The FTC'S own publication, "A Businessperson's Guide to Federal Warranty Law," states that "using warranty disclosures in service contracts could confuse customers." States have already undertaken comprehensive regulation of service contracts, requiring disclosures that in most, if not all, cases exceed the warranty disclosures required by the Magnuson-Moss Act. Attempts to further regulate these products through the FTC's interpretations, rules, or guides is likely to result in confusion for the Industry and could lead to increased litigation as companies try to reconcile state and federal law. The SCIC urges the FTC to respect the rights of the states to regulate service contracts and refrain from amending the Interpretations, Rules, and Guidelines to the Magnuson-Moss Act to further address service contracts.

If you require additional information or have questions with respect to the information contained herein please do not hesitate to contact me.

Sincerely,

*A.S.*

Timothy J. Meenan  
Executive Director, SCIC