

FLORIDA SERVICE AGREEMENT ASSOCIATION



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“Reputable Service Agreement Companies Serving the Needs of Florida”

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 member companies, the Florida Service Agreement Association (FSAA) appreciates the opportunity to respond to the FTC’s Request for Comment on the Interpretations, Rules, and Guides to the Magnuson-Moss Warranty Act. By way of background, the FSAA is a Florida-based trade association that advocates for the regulation of the service contract industry in the State of Florida. The FSAA membership consists of over thirty-five companies licensed to do business in Florida pursuant to Chapter 634 of the Florida Insurance Code—the Florida statutory framework regulating the service contract industry in the state. Since the early eighties, the FSAA has worked with the Florida Office of Insurance Regulation and the Florida Legislature to develop fair and balanced regulation of service contracts in Florida.

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 and for additional consideration over and above the price of the product. Consumers choose whether 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 protection for a consumer’s investment in goods. Although the Magnuson-Moss Act defines a service contract, the disclosures required by the Act do not apply to service contracts.

The Request for Comment seeks comment on whether the Interpretations, Rules, and Guides to the Magnuson-Moss Warranty Act should be amended to address service contracts. The FSAA’s position is that the interpretations, rules, and/or guides should not be amended to specifically address service contracts as the various states’ regulation, including Florida, of the industry has proven effective and to create an overlay of federal regulation to an already existing

complex state regulatory scheme would create unnecessary burdens to both the industry and to federal and state governments.

In Florida, the party obligated to perform under a service contract are subject to regulation in the state as a “specialty insurer” and the industry is overseen by the state’s insurance regulator—the Office of Insurance Regulation (the “Office”). A copy of the state laws applicable to service contracts in Florida are attached to this letter and marked as Exhibit A. You can see from a review of the laws in Florida that the industry is currently subject to a significant regulatory framework that, among other things, provides the following with respect to the service contract business in Florida:

- Requirement that a service contract obligor must apply for and obtain a certificate of authority from the Office prior to doing business in the state;
- Minimum net worth requirements for service contract obligors in the state;
- Requirements for an obligor to demonstrate financial responsibility for its obligations under contracts sold in the state either through the use of a contractual liability insurance policy or a self-funded unearned premium reserve;
- Contract content requirements including but not limited to a requirement that contracts contain a disclosure to the effect that contracts are cancellable at any time by the consumer with the consumer receiving a pro rata refund of any monies paid for the contract, less claims paid;
- Requirement for those persons who sell service contracts to obtain an insurance agent type license to do so, and a requirement that a licensee be appointed by the service contract obligor on whose behalf the person sells service contracts in Florida; and
- An array of consumer protection measures that must be complied with by companies and individuals selling service contracts to Florida consumers such as the requirement that a consumer be provided with a complete sample copy of a contract’s terms and conditions prior to sale.

Since the statutory framework and accompanying administrative rules were enacted in Florida, the regulation of the industry in the state has resulted in sound service contract obligor companies and has fostered an environment in which consumers are appropriately informed of the benefits and coverage provided by a contract thereby allowing them to make an informed decision regarding whether to purchase a service contract or not. The laws currently in place in Florida conform to regulatory best practices and have provided long-term stability for the service contract industry in the state.

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.” A review of the attached statutory framework in place in Florida reveals that the state’s existing service contract laws undoubtedly provide greater protection to consumers than the requirements contained in the Magnuson-Moss Act on the whole. Amending the Rules, Interpretations, and Guidelines to include service contracts would have little substantive effect on service contract regulation in Florida because in most cases the state law would provide greater protection than that spelled out by the Magnuson-Moss Act. Moreover, an overlay of federal regulation to an already existing complex state regulatory framework would create a duplication of efforts between the state and federal governments, and would result in creating confusion on the part of regulators, industry, and consumers alike.

Amending the Interpretations, Rules, and Guidelines to address service contracts would require the FTC to spend significant time and energy to little or no practical effect. The Magnuson-Moss Act properly applies 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.” Florida has already undertaken an analysis of the industry and has adopted a comprehensive regulatory framework for service contracts, and has put in place required service contract disclosures which exceed the warranty disclosures required by the Magnuson-Moss Act. The FSAA urges the FTC to respect the right of the states to regulate service contracts and refrain from amending the Interpretations, Rules, and Guidelines to the Magnuson-Moss Act to more specifically address service contracts.

Sincerely,

Timothy J. Meenan
Executive Director, FSAA