

Appendix A – Suggested Amendments to 16 C.F.R Part 464

Amendments to § 464.1 - Definitions

¹Amend definition of “Clear(ly) and Conspicuous(ly) in § 464.1(c)(4):

In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable *and must be capable of being printed and saved in an easily readable format.*

²Amend the definition of “Clear(ly) and Conspicuous(ly)” in § 464.1(c)(8):

(8) When the representation or sales practice targets a specific audience, such as *limited English proficient consumers*, children, older adults, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

³Amend the definition “Ancillary Good or Service” in §464.1(a):

Ancillary Good or Service means any *optional*, additional good(s) or service(s), offered to a consumer as part of the same transaction, *that a reasonable consumer would not expect to be included with the purchase of the advertised good or service.*

⁴Add a new definition for “Mandatory fees” in § 464.1:

Mandatory fee includes but is not limited to:

(1) *Any fee or surcharge that must be paid in order to purchase the advertised good or service;*

(2) *A fee or surcharge that is not reasonably avoidable; or*

(3) *A fee or surcharge for any good or service that a reasonable consumer would expect to be included with the purchase of the advertised good or service.*

⁵Amend the definition of “Total Price” in § 464.1(g):

Total Price means the maximum total of all *mandatory* fees or charges a consumer must pay for a good or service ~~and any mandatory Ancillary Good or Service~~, except that Shipping Charges and Government Charges may be excluded.

¹ Comment § III.D.2, p. 19.

² Comment § III.D.1, p. 18-19.

³ Comment § III.C.2.a, p 13.

⁴ Comment § III.C.2.a, p. 14.

⁵ Comment § III.C.2.a, p. 14.

Amendments to § 464.2 – Hidden Fees Prohibited

⁶Amend § 464.2(b):

(b) In any offer, display, or advertisement that contains an amount a consumer may pay,

(1) a Business must display the Total Price more prominently than any other Pricing Information; *and*

(2) a Business shall not automatically include Ancillary Goods or Services in the Total Price or automatically select Ancillary Goods or Services for purchase on behalf of the consumer.

Amendments to § 464.3 – Misleading Fees Prohibited

⁷Amend § 464.3(b):

(b) A Business must disclose Clearly and Conspicuously *before the consumer provides their billing or payment information* the nature and purpose of any amount a consumer may pay that is excluded from the Total Price, including the refundability of such fees and the identity of any good or service for which fees are charged.

⁶ Comment § III.C.2.b, p. 16.

⁷ Comment § III.A, p. 6-7.