

THE SPARK PLUG

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Five Surcharging Rules You Must Follow to Avoid Hefty Fines

WRITTEN BY BO KEENEY, VAA EXECUTIVE DIRECTOR

We were recently alerted that the credit card companies have tightened their oversight of surcharging programs. Merchants that do not adhere to the surcharging rules may be fined up to \$50,000 for a first offense. The article below reviews the five rules all surcharge programs must follow. This is important information for any merchant that is currently surcharging credit card purchases or is considering a surcharge program. Surcharging is a practice that some merchants use to pass along credit card processing fees to their customers who pay by credit card. Depending on the merchant's business, it can be an effective way of offsetting processing costs but there are specific rules that accompany all surcharging programs. These rules are designed to protect consumers, and they are taken very seriously by the credit card companies. Visa and Mastercard have recently amped up enforcement of their surcharging rules by utilizing tactics such as secret shoppers to monitor adherence. Merchants that are found to be out of compliance face hefty fines – as much as \$50,000 for a first offense. To avoid penalties, below are the surcharging rules that all merchants must follow, regardless of size

1. You Must Give a 30-Day Advance Notice to the Credit Card Companies

Merchants must submit a notification form to their processor and the credit card companies at least 30 days prior to implementing a surcharge program. Work with your credit card processor to complete the paperwork then register it with all the credit companies on your behalf and complete any necessary training.

2. Disclose the Surcharge to Your Customers in Advance

Signage must be clearly displayed so customers will know, in advance, that a surcharge will be imposed if they pay by a credit card. The specific requirement is to post signage at the entrances and all points of sale – including menus. Menu pricing can stay the same for compliant surcharging programs. Only a dual price program requires a change in menu pricing. That would be a separate category from a traditional surcharge program. You must allow customers to change their payment type at POS to avoid the surcharge. In addition, the surcharge amount must also be displayed as a separate line item on the customer's receipt. The customer notification surcharge rule applies to all transaction channels – including onsite, online, and on the phone. Even if your customers are only placing an order over the phone, you must inform them of the surcharge, so they are not surprised when they pick up and pay for their order.

3. There Are Limits To How Much You Can Surcharge

The surcharge amount may not be greater than your current processing fees for the type of credit card being used – typically 2-3 percent. According to the rules, 3% percent is the maximum you can surcharge as of April 2023 . Dual pricing is still not to exceed 4%. Be aware that some credit card processors are increasing processing fees up to that maximum rate as a way to generate greater profits. Even though you're not paying that higher fee, you probably don't want your customers to be taken advantage of like that.

4. Only Credit Card Transactions May Be Surcharged

You may not surcharge a debit card or prepaid card transaction. Even if customers paying with a debit card choose the "Credit" option on the credit card terminal, you still are not allowed to impose a surcharge. This means you will need a method of distinguishing the type of card your customer is using at the point of purchase.

5. A Surcharge Indicator Must Be Passed With The Transaction Details

This is a rule that is technology-driven rather than merchant process-driven. But it is still a requirement of the credit card companies. As a result, merchants that surcharge are held responsible for making sure it is enabled and passed. Please be aware that not all POS software can do this. It's wise to check with your credit card processor or the manufacturer of your equipment to ensure the surcharge indicator is being passed properly.

**State Laws Vary - There may be laws specific to your state in terms of taxes on surcharge amounts, amount you can surcharge, and even the legality of surcharging. The credit card companies are only monitoring for compliance with their surcharge rules and requirements. That said, it's a good idea to check with your tax preparer or your legal counsel to make sure your program complies with your state's laws too.

Thank you to Reliable Payments for assisting with gathering some of this information. For more information, please reach out to Zack Snead, Account Manager, at 804.533.0073 or zsnead@reliablepayments.com
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