

National Restaurant Association Fact Sheet
Credit-card surcharges: What operators should know
Last updated Jan. 29, 2013

Notice: The following information is not intended to serve as legal advice. Please consult your merchant acquirer/processor and/or legal counsel should you wish to implement a surcharge.

Q1: Am I allowed to add surcharges for credit card charges?

A: Effective Jan. 27, 2013, Visa and MasterCard relaxed company rules that prevented merchants from adding surcharges when guests pay by credit card. The Visa rule changes can be found [here](#) and the MasterCard rule changes [here](#).

Q2: Why did Visa and MasterCard change their surcharging policies?

The card companies relaxed their bans on surcharges for Visa and MasterCard credit-card purchases as part of a preliminary settlement agreement in a long-running antitrust case brought by the National Restaurant Association and other merchant plaintiffs.

The card companies have come under heavy criticism and legal challenges for the tight grip they hold over the swipe fees that merchants pay when guests pay by debit or credit card. Card fees are among the five fastest-growing costs for the restaurant industry, and transaction fees more than tripled in the past decade for all merchants. Merchants have no ability to negotiate -- and often, little ability to understand -- the swipe fees they are forced to pay and that inflate prices for merchants and all consumers.

The NRA, which has been pushing for years for changes to the broken swipe-fee market, opposes the preliminary settlement in the antitrust case. So do a majority of the named class-action plaintiffs in the case.

“We believe surcharges are not the way to fix a broken market for swipe fees,” says Scott DeFife, executive vice president for policy and government affairs for the National Restaurant Association. “We think the largest banks and card networks are eager to use the surcharges as a ‘remedy’ because these charges allow them to collect the same over-inflated swipe fees – with consumers continuing to pay the price.”

The NRA believes the market for swipe fees remains broken under the agreement. “If the market were truly competitive, transaction fees would decrease because of increased volume and improved technology,” DeFife says.

Q3: Is it likely that there will be widespread surcharging by businesses?

Despite predictions from banks and card companies that surcharges will be rampant, most observers don’t expect widespread surcharging by businesses. The idea of widespread price increases is a myth being pushed by card companies.

In addition, 10 states (see Q4) prohibit merchants from adding surcharges

Q4: What do I need to know about adding surcharges?

A: The new surcharging rules are complicated, so the NRA encourages restaurateurs who are considering surcharges to discuss the rules with their processors, as well as legal counsel. The revised Visa and MasterCard rules carry many stipulations and card companies reserve the capacity to fine merchants for perceived violations. The fines start at \$5,000 a day. As with other network rules and fines, merchants have limited legal recourse.

Before you add surcharges, here's what you need to know about the new Visa and MasterCard rules:

1. Merchants should receive notice from their acquirer/processors about the network rule changes.
2. Merchants must notify each card brand at least 30 days before imposing a surcharge.
3. Merchants must meet all criteria in the revised network rules, or risk card company fines that begin at \$5,000 a day.
4. The rule changes only apply to Visa and MasterCard credit cards, not debit cards.
5. If you decide to implement a surcharge, know the fees associated with cards used at your restaurant. The fees are not transparent, and there is no way to know the fees for specific cards at point of sale. Without that information (which the card companies failed to provide), implementing the surcharge provisions is virtually impossible.
6. Merchants can't add surcharges for American Express payments. American Express rules (under investigation by the Justice Department) require all electronic payments (including debit) to be treated similarly. Click [here](#) to read the New York Times' coverage of this Catch 22 for operators.
7. Ten states ban credit card surcharges: California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma and Texas. The network rule changes don't supersede those laws. Under the rule changes, operators must add surcharges to all sales or none. That means restaurant companies with operations in those states can't surcharge.
8. Merchants should review current and future terms and definitions in your card company contracts. In the rule changes posted online, the card networks have changed their definitions of covered "credit card" products from previous versions of their public operating rules to potentially include mobile payments. The NRA wants operators to be aware of this take-it-or-leave-it change.

Q5: What's the status of the antitrust lawsuit the NRA and others filed against Visa and MasterCard over anticompetitive swipe fees?

A: The National Restaurant Association is one 19 named plaintiffs who in 2005 charged Visa and MasterCard with exercising monopolistic control over merchant swipe fees.

Over the objections of the NRA and a majority of its co-plaintiffs, the court in November gave preliminary approval to a proposed July 2012 settlement.

The NRA opposes the proposed settlement because it does little to provide meaningful relief from excessive and continuously increasing credit card fees, and doesn't address the anticompetitive manner in which card fees are set. The NRA and its merchant allies also believe that the proposed settlement could prevent the industry from challenging future rates, fees, fines or practices.

The surcharging provision is just one part of the preliminary settlement. Other provisions are equally worrisome. The NRA believes, for example, that the preliminary settlement could impede innovation in the emerging mobile-payments market.

"Our industry is excited about the prospect for real competition, and the last thing we want is for major card brands to stifle the innovation we see from new players in the mobile payment arena," says the NRA's DeFife. "Potentially incorporating mobile devices in the current structure would cement the card companies' stranglehold and broken business model in this emerging marketplace. The types of traps under the rule changes are all the more reason lawmakers and federal agencies need to closely scrutinize the actions of these companies."

The NRA is waiting for a final ruling from the court, expected in early 2013, on whether the proposed settlement will proceed, and will communicate additional information to its members as more becomes available.

In the meantime, the NRA urges restaurateurs to proceed cautiously if they are approached by third-party companies offering to help merchants "claim" their share of the settlement. Once the court decides whether the preliminary settlement will proceed, an estimated 7 to 8 million merchants will receive official notices about next steps.