

TITLE 49 - TRANSPORTATION
SUBTITLE V - RAIL PROGRAMS
PART C - PASSENGER TRANSPORTATION
CHAPTER 243 - AMTRAK

§ 24308. Use of facilities and providing services to Amtrak

(a) General Authority.—

(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2) (A) If the parties cannot agree and if the Surface Transportation Board finds it necessary to carry out this part, the Board shall—

- (i) order that the facilities be made available and the services provided to Amtrak; and
- (ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Board shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.

(C) The Board shall decide the dispute not later than 90 days after Amtrak submits the dispute to the Board.

(3) Amtrak's right to use the facilities or have the services provided is conditioned on payment of the compensation. If the compensation is not paid promptly, the rail carrier or authority entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) Operating During Emergencies.— To facilitate operation by Amtrak during an emergency, the Board, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Board then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) Preference Over Freight Transportation.— Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of the carrier and Amtrak on reasonable terms.

(d) Accelerated Speeds.— If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Board for an order requiring the carrier to allow the accelerated speeds. The Board shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the Board shall establish the maximum allowable speeds of Amtrak trains on terms the Board decides are reasonable.

(e) Additional Trains.—

(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Board for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the

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record, the Board may order the carrier, within 60 days, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times. However, if the Board decides not to hold a hearing, the Board, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The Board shall consider—

(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and

(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the Board shall decide the dispute under subsection (a) of this section.

(f) **Passenger Train Performance and Other Standards.**—

(1) **Investigation of substandard performance.**— If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 fails to meet those standards for 2 consecutive calendar quarters, the Surface Transportation Board (referred to in this section as the “Board”) may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate such an investigation, to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators. As part of its investigation, the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays. In making its determination or carrying out such an investigation, the Board shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train.

(2) **Problems caused by host rail carrier.**— If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.

(3) **Damages and relief.**— In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as—

(A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and

(B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.

(4) **Use of damages.**— The Board shall, as it deems appropriate, order the host rail carrier to remit the damages awarded under this subsection to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier’s failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 911; 110–432, div. B, title II, § 213(a), (d), Oct. 16, 2008, 122 Stat. 4925, 4926.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
24308(a)(1)– (3)		
45:562(a)(1).		
	Oct. 30, 1970, Pub. L. 91–518, § 402(a)(1), 84 Stat. 1335; June 22, 1972, Pub. L. 92–316, § 5(1), 86 Stat. 229; Nov. 3, 1973, Pub. L. 93–146, § 10(1), 87 Stat. 552; Oct. 5, 1978, Pub. L. 95–421, § 15, 92 Stat. 929; Aug. 13, 1981, Pub. L. 97–35, § 1181, 95 Stat. 693; Apr. 7, 1986, Pub. L. 99–272, § 4017(b)(1), 100 Stat. 110.	
24308(a)(4)		
45:562 (note).		
	July 11, 1987, Pub. L. 100–71 (last proviso under heading “Grants to the National Railroad Passenger Corporation”), 101 Stat. 447.	
24308(b)		
45:562(c).		
	Oct. 30, 1970, Pub. L. 91–518, 84 Stat. 1327, § 402(c); added June 22, 1972, Pub. L. 92–316, § 5(2), 86 Stat. 229.	
24308(c)		
45:562(e).		
	Oct. 30, 1970, Pub. L. 91–518, 84 Stat. 1327, § 402(e); added Nov. 3, 1973, Pub. L. 93–146, § 10(2), 87 Stat. 552; Aug. 13, 1981, Pub. L. 97–35, § 1188(c), 95 Stat. 699.	
24308(d)		
45:562(f).		
	Oct. 30, 1970, Pub. L. 91–518, 84 Stat. 1327, § 402(f); added Nov. 3, 1973, Pub. L. 93–146, § 10(2), 87 Stat. 552.	
24308(e)		
45:562(g).		
	Oct. 30, 1970, Pub. L. 91–518, 84 Stat. 1327, § 402(g); added May 30, 1980, Pub. L. 96–254, § 216, 94 Stat. 418; Apr. 7, 1986, Pub. L. 99–272, § 4006(2), 100 Stat. 107.	

In subsection (a)(1), the word “authority” is substituted for “agencies” for consistency in the revised title and with other titles of the United States Code. The words “tracks and other” are omitted as surplus. The words “of . . . by, the carrier or authority” are added for clarity. The words “and conditions” are omitted as surplus.

In subsection (a)(2)(A), before clause (i), the words “the purposes of” are omitted as surplus. In clause (ii), the words “just and” are omitted as surplus.

Subsection (a)(2)(B) is substituted for 45:562(a)(1) (3d sentence) to eliminate unnecessary words.

In subsection (a)(2)(C), the words “shall decide the dispute” are added, and the words “submits the dispute” are substituted for “application”, for clarity.

In subsection (a)(3), the words “Amtrak’s right to use the facilities or have the services provided is conditioned on payment of the compensation” are substituted for “and the rights of the Corporation to such services or to the use of tracks or facilities of the railroad or agency under such order . . . shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission” to eliminate unnecessary words. The words “or under an order issued under subsection (b) of this section” are omitted as obsolete because 45:562(b) is executed. The words “amount of”, “fixed”, “duly and”, and “properly” are omitted as surplus.

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In subsection (a)(4), the words “notwithstanding any other provision of law”, “hereafter”, and “becomes inadequate or otherwise” are omitted as surplus.

In subsections (b)–(d), the words “just and” are omitted as surplus.

In subsection (b), the words “as may be deemed by it to be necessary”, “tracks and other”, and “proceed to” are omitted as surplus. The words “personal injury” are substituted for “casualty” for consistency.

In subsections (c) and (d), the words “an opportunity for a” are added for clarity and consistency.

In subsection (c), the word “given” is omitted as surplus. The words “rail line” are substituted for “line of track” for consistency in the revised title and with other titles of the Code. The word “appropriate” is omitted as surplus. The words “the carrier” are substituted for “trains” for clarity and consistency. The words “and Amtrak” are added for clarity.

In subsection (d), the words “upon request of the Corporation” and “otherwise” are omitted as surplus. The words “which improvements would be required” are substituted for “and with respect to the nature and extent of improvements to track, signal systems, and other facilities that would be required” to eliminate unnecessary words.

In subsection (e)(1), the words “satisfactory, voluntary” are omitted as surplus. The words “provide, or allow Amtrak to provide” are added, and the words “Amtrak may apply to the Secretary for an order requiring the carrier to provide or allow for the operation of the requested trains” are substituted for “Upon receipt of an application from the Corporation”, for clarity.

In subsection (e)(2)(A), the words “involved” and “seeking to oppose the operation of an additional train” are omitted as surplus. The words “when conducting a hearing” are added for clarity.

In subsection (e)(2)(B), the word “proper” is omitted as surplus. The words “60 miles” are substituted for “55 miles” for consistency with 45:501a(8), restated in section 24101(c)(6) of the revised title. Section 1172(3) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 91–35, 95 Stat. 688) raised the speed from 55 to 60 in 45:501a but did not make a corresponding change in 45:562(g).

In subsection (e)(3), the words “Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection” are substituted for 45:562(g) (last sentence words before last comma) to eliminate unnecessary words. The words “the dispute” are added for clarity and consistency in this section.

References in Text

Section 207 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsec. (f)(1), is section 207 of Pub. L. 110–432, which is set out in a note under section 24101 of this title.

Amendments

2008—Subsec. (a)(2). Pub. L. 110–432, § 213(d)(2), substituted “Board” for “Commission” wherever appearing.

Subsec. (a)(2)(A). Pub. L. 110–432, § 213(d)(1), substituted “Surface Transportation Board” for “Interstate Commerce Commission” in introductory provisions.

Subsec. (b). Pub. L. 110–432, § 213(d)(2), substituted “Board” for “Commission” in two places.

Subsec. (c). Pub. L. 110–432, § 213(d)(3), (4), substituted “Board” for “Secretary of Transportation” after “unless the” and for “Secretary” in three places.

Subsecs. (d), (e)(1), (2). Pub. L. 110–432, § 213(d)(4), substituted “Board” for “Secretary” wherever appearing.

Subsec. (e)(3). Pub. L. 110–432, § 213(d)(2), substituted “Board” for “Commission”.

Subsec. (f). Pub. L. 110–432, § 213(a), added subsec. (f).

Fees

Pub. L. 110–432, div. B, title II, § 213(b), Oct. 16, 2008, 122 Stat. 4926, provided that: “The Surface Transportation Board may establish and collect filing fees from any entity that files a complaint under section 24308 (f)(1) of title 49,

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United States Code, or otherwise requests or requires the Board's services pursuant to this division [see Short Title of 2008 Amendment note set out under section 20101 of this title]. The Board shall establish such fees at levels that will fully or partially, as the Board determines to be appropriate, offset the costs of adjudicating complaints under that section and other requests or requirements for Board action under this division. The Board may waive any fee established under this subsection for any governmental entity as determined appropriate by the Board."

Special Passenger Trains

Pub. L. 110-432, div. B, title II, § 216, Oct. 16, 2008, 122 Stat. 4930, provided that: "Amtrak is encouraged to increase the operation of special trains funded by, or in partnership with, private sector operators through competitive contracting to minimize the need for Federal subsidies. Amtrak shall utilize the provisions of section 24308 of title 49, United States Code, when necessary to obtain access to facilities, train and engine crews, or services of a rail carrier or regional transportation authority that are required to operate such trains."