

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 08-1264**

**September Term 2008**

TRAN-73FR35961

Filed On: November 12, 2008

BNSF Railway Company, et al.,

Petitioners

v.

Department of Transportation,

Respondent

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Consolidated with 08-1276, 08-1338, 08-1342

**BEFORE:** Henderson and Rogers, Circuit Judges, and Randolph,\* Senior  
Circuit Judge

**ORDER**

Upon consideration of the emergency motion for a stay pending review, the opposition thereto, and the reply, it is

**ORDERED** that the administrative stay entered by this court on October 31, 2008, be dissolved. It is

**FURTHER ORDERED** that the motion for stay be granted in part. Petitioners have satisfied the stringent standards required for a stay pending review with respect to the amendment of 49 C.F.R. § 40.67(b). See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); D.C. Circuit Handbook of Practice and Internal Procedures 33-34 (2007). The portion of the Department of Transportation's order issued on October 22, 2008, 73 Fed. Reg. 62910, making 49 C.F.R. § 40.67(b) mandatory rather than optional effective November 1, 2008, is hereby stayed pending further order of the court. Because petitioners did not seek a stay of 49 C.F.R. § 40.67(i) before the agency, the motion for a stay is denied with respect to that regulation. See Fed. R. App. P. 18(a); D.C. Cir. Rule 18(a)(1). It is

**FURTHER ORDERED**, on the court's own motion, that consideration of these petitions for review be expedited. See D.C. Circuit Handbook of Practice and Internal Procedures 33 (2007). It is

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\*Senior Judge Randolph would not expedite the petitions for review.

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**FURTHER ORDERED** that the following briefing format and schedule be established:

Joint Brief of Petitioners  
(not to exceed 14,000 words)..... December 12, 2008

Joint Appendix..... December 12, 2008

Brief of Respondent  
(not to exceed 14,000 words)..... January 12, 2009

Joint Reply Brief of Petitioners  
(not to exceed 7,000 words)..... January 26, 2009

The Clerk is directed to calendar this case for argument on the first available date following completion of briefing. Due to the expedited nature of this case, the court will not entertain dispositive motions. The parties should therefore address in their briefs any arguments otherwise properly raised in such motions. The court reminds the parties that

In cases involving direct review in this court of administrative actions, the briefs of the petitioners must set forth the basis for the claim of standing . . . . When the petitioners' standing is not apparent from the administrative record, the brief must include arguments and evidence establishing the claim of standing.

See D.C. Cir. Rule. 28(a)(7).

The parties are directed file and serve their submissions by hand. All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover. See D.C. Cir. Rule 28(a)(8).

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
MaryAnne Lister  
Deputy Clerk