

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT**

**MID-AMERICA MILLING COMPANY,
LLC, *et al.*,**

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION, *et al.*,**

Defendants.

Case No. 3:23-cv-00072-GFVT-EBA

**DOT DEFENDANTS' RESPONSE TO THE INTERVENOR
DBEs' MOTION TO DISMISS AND VACATE**

On May 28, 2025, Plaintiffs, Mid-America Milling Company, LLC (“MAMCO”) and Bagshaw Trucking, Inc. (“Bagshaw”), and Defendants United States Department of Transportation; Sean Duffy, Secretary of Transportation; Sean McMaster, the Administrator of the Federal Highway Administration;¹ and Shundreka Givan, Division Administrator of the Federal Highway Administration’s Kentucky Division (collectively, “DOT Defendants”) filed the Joint Motion for Entry of Consent Order, ECF No. 82, to enter into the Proposed Consent Order, ECF No. 82-1. In response, on June 18, 2025, the National Association of Minority Contractors; Women First National Legislative Committee; Airport Minority Advisory Council; Women Construction Owners & Executives, Illinois Chapter; Atlantic Meridian Contracting Corp.; and Upstate Steel, Inc. (collectively, “Intervenor DBEs”) filed the Intervenor DBEs’ Opposition to Joint Motion for Entry of Consent Order. ECF No. 91. Then, on October 3, 2025, DOT Defendants promulgated an

¹ Defendants hereby notify the Court and Plaintiffs of the addition of Mr. McMaster, now that the administrator position has been filled, pursuant to Federal Rule of Civil Procedure 25(d) and request that the Clerk of the Court amend the caption to this case accordingly.

Interim Final Rule (“IFR”) that modified implementation of the Disadvantaged Business Enterprise (“DBE”) Program and Disadvantaged Business Enterprise in Airport Concessions (“DBACE”) programs. Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications, 90 Fed. Reg. 47969 (Oct. 3, 2025) (to be codified at 49 C.F.R. pts. 23, 26). On December 23, 2025, Intervenor DBEs filed the Intervenor DBEs’ Motion to Dismiss and Vacate. ECF No. 129.

DOT Defendants request this Court deny Intervenor DBEs’ Motion to Dismiss and Vacate, ECF No. 129, and instead consider and enter Plaintiffs’ and DOT Defendants’ Proposed Consent Order, ECF No. 82-1. DOT Defendants acknowledge that the IFR gives Plaintiffs much of the relief that they would obtain through entry of the Proposed Consent Order, and that an agency’s repeal of a challenged rule will often lead to mootness. *See, e.g., Gun Owners of America v. DOJ*, 157 F.4th 834 (6th Cir. 2025). In the unique circumstances of this case, however, dismissal based on mootness would not be appropriate. It is entirely possible that the IFR will be challenged in litigation—perhaps even by the DBE Intervenor—and such litigation could lead to the IFR being stayed or vacated. Given this potential outcome, and that the Court has not resolved the merits of Plaintiffs’ constitutional claims, there is a “fair prospect” that Plaintiffs’ claimed injuries will “recur in the foreseeable future,” and the case “remains a live one.” *Ohio v. EPA*, 969 F.3d 306, 310 (6th Cir. 2020) (holding that case challenging repealed rule was not moot in light of ongoing litigation challenging the repeal).

Dated: January 13, 2026

COUNSEL FOR DEFENDANTS:

Respectfully submitted,

U.S. Department of Justice
Employment Litigation Section
Civil Rights Division

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