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## AGENCIES PETITIONED TO REVOKE ILLEGAL REGULATIONS

The Washington Legal Foundation (WLF) petitioned the Office of Management and Budget (OMB) and its Office of Information and Regulatory Affairs (OIRA) to require all government agencies to promptly revoke rules and regulations that have been struck down by federal courts but have been left on the books by the agencies as if they were still valid and enforceable. The regulated community is then falsely led to believe that the rules are still valid, and thus, expends considerable resources complying with them.

At the same time, WLF petitioned the Environmental Protection Agency (EPA) as well as other agencies such as the Food and Drug Administration (FDA), the Occupational Safety and Health Administration (OSHA), Consumer Product Safety Commission (CPSC), and the Departments of Interior, Agriculture, and Commerce, to revoke all regulations that have been declared invalid by the courts. Other agencies may be targeted by WLF with similar petitions.

The worst offender appears to be the EPA, which has yet to revoke certain rules that were overturned by the courts over a year ago. WLF's petition cites an analysis prepared for WLF by Richard G. Stoll, *EPA Ignores Court Mandates To Revoke Unlawfully Issued Rules* (WLF Legal Opinion Letter, June 15, 2001) which describes several EPA rules that are still on the books despite court rulings declaring them invalid for violating procedural and substantive requirements. For example, in *Association of Battery Recyclers v. EPA*, 208 F.3d 1047 (D.C. Cir. 2000), the court of appeals struck down certain language from EPA's rules defining "solid waste" under the Resource Conservation and Recovery Act (RCRA). Yet, over 14 months later, the EPA has taken no action to remove the invalid provisions from its rules. WLF's petition would also require agencies to post information about any revoked regulation on their websites shortly after any adverse court ruling.

"There's absolutely no excuse for this delay by the EPA or any other agency to keep invalid rules and regulations on the books," said Paul D. Kamenar, WLF's Senior Executive Counsel. "Excessive regulation of free enterprise is bad enough without having to comply with regulations that have been struck down by the courts," Kamenar said.

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