NATIONAL ASSOCIATION OF
Manufacturers

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Testimony

of W. Kirk Liddell
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before the Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives

on Regulatory Chaos: Finding Legislative Solutions
to Benefit Jobs and the Economy

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COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
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Chairman Shimkus, Ranking Member Green and members of the Subcommittee on Environment and the Economy, thank you for the opportunity to testify before you today about reform of the regulatory system and job creation.

My name is Kirk Liddell, and I am president and CEO of IREX Corporation, based in Lancaster, Pa. IREX owns and provides support services to a group of companies with expertise in mechanical insulation contracting, interior contracting, asbestos abatement and other specialty contracting services throughout the United States and Canada. Its subsidiaries operate 32 branches and in recent years have averaged 2,000 employees. Principal industries served include power generation, oil production and refining, process manufacturing, health care, pharmaceutical, education and other nonresidential construction.

I also serve as a member of the Board of Directors of the National Association of Manufacturers (NAM) and as a member of the NAM's Executive Committee. I am pleased to testify on the NAM's behalf today. The NAM is the nation's largest manufacturing trade association, representing manufacturers in every industrial sector and in all 50 states. Manufacturing has a presence in every single congressional district providing good, high-paying jobs. The United States is the world's largest manufacturing

economy. It produces $1.6 trillion in value each year, or 11.2 percent of GDP, and employs nearly 12 million Americans working directly in manufacturing.

On behalf of the NAM and the millions of men and women working in manufacturing in the United States, I wish to express my support for your efforts to reform the regulatory process and allow manufacturers in this country to do what they do best – make things and create jobs.

Manufacturers have been deeply affected by the recent recession. The manufacturing sector lost 2.2 million jobs during this period. Since the trough of the recession in December 2009, manufacturers have generated 251,000 net new jobs, just over 10 percent of our total losses in the downturn. But in the last few months, job growth in manufacturing has slowed dramatically.

To regain manufacturing momentum and return to net manufacturing job gains, we need improved economic conditions and improved government policies. Because of the significant challenges affecting manufacturing, the NAM developed a strategy to enhance our growth.

The NAM published its "Manufacturing Strategy for Jobs and a Competitive America" in June of last year. In that strategy, we identified three overarching objectives: 1) to be the best country in the world to headquarter a company and to attract foreign investment; 2) to be the best country in the world to do the bulk of a company's research and development; and 3) to be a great place to manufacture, both to meet the needs of the American market and to serve as an export platform to the world. To achieve those objectives, we need sound policies in taxation, energy, labor, trade, health care, education, litigation and, certainly, regulation.

The focus of today's hearing is to review legislative solutions to reforming our chaotic regulatory system. I would be remiss if I did not provide the Subcommittee with a warning about one specific costly and unnecessary regulatory proposal and recommend

your action. The Environmental Protection Agency (EPA) has embarked on a decades-long process to implement the Clean Air Act and its amendments. There is no doubt that our nation has gained enormous benefits from efforts to improve air quality. But the continued ratcheting down of emission limits produces diminishing returns at far higher marginal costs. This means that each new air rule will have a greater impact on job creation than those in the past.

Costs of pollution abatement are capital intensive. In a time of economic recovery where capital is extremely scarce, every dollar diverted from productive use creates additional pressure to reduce labor costs. When the prices of commodities and other manufacturing inputs are increasing, as they are today, even more pressure builds to squeeze labor costs. In this environment, it is clear that unnecessary or cost-ineffective regulation dampens economic growth and will continue to hold down job creation. For some firms, it will be the final straw that destroys the whole business.

That is why it is so shocking that the EPA proposed making an enormously costly Bush Administration rule, the National Ambient Air Quality Standard (NAAQS) for Ozone, even more stringent and costly when a reconsideration was not required by law. One study by the Manufacturers Alliance/MAPI estimates that the most stringent ozone proposal being considered would result in the loss of 7.3 million jobs by 2020 and add $1 trillion in new regulatory costs per year between 2020 and 2030.

We have a short reprieve from this rule because the EPA has delayed its final proposal until sometime this month, but the EPA was not required to review this rule again until 2013. We encourage this Subcommittee to direct the EPA to defer this reconsideration altogether and devote its resources to the every-five-year review mandated by law and next slated for 2013. We thank Chairman Shimkus, Representative Barrow and several members of this Subcommittee for sending a letter on June 22 to EPA Administrator Lisa Jackson urging just that course of action.

Manufacturers believe a fundamental premise of Congress and the Administration going forward should be: first, do no harm to the recovery. Deferring a reconsideration of NAAQS for Ozone would be a strong signal to the marketplace of a new, common-sense approach to regulation and a step toward increasing certainty.

If we are to be successful in creating a more competitive economy, we must also reform the design of our regulatory system to ensure we never again reach the state we find ourselves in today. The NAM makes the following recommendations to the Subcommittee on the design of the institutions and systems through which modern rulemaking is conducted.

Independent Agencies – As this Subcommittee is aware, the President does not exercise similar authority over the independent regulatory agencies as he does over other agencies within the Executive Branch. Congress has given the President's OMB review authority over those independent agencies' information collection and paperwork requirements; there is little distinction then to extending its review to the regulations that impose those paperwork burdens.

On July 11, 2011 the President issued a new Executive Order suggesting that independent agencies should conform to the principles of his regulatory review Executive Order 13563 and participate in retrospective reviews of their existing regulation. The President should be praised for this action, but this approach is still more tepid than necessary. As a result, Congress should confirm the authority of the President over these agencies. The same reasons for which centralized White House review of regulations benefits other single-mission agencies, like a broader economy-wide perspective on regulatory proposals, would similarly benefit independent agency rules. Consistency across the government in regulatory procedures and analysis would only improve certainty and transparency of the process. During recent crises in the regulatory sphere of the independent agencies, they proved no better than other Executive Branch

agencies at preventing bad outcomes. The case for their inclusion in centralized regulatory review is clear and Congress should act to make it certain.

RFA Reform – The Regulatory Flexibility Act (RFA) requires agencies to be sensitive to the needs of small businesses when drafting regulations. It has a number of procedural requirements, including that agencies consider less costly alternatives for small businesses, and in some cases must empanel a group of small business representatives to help consider a rule before it is proposed. Currently, under the RFA, only a small number of regulations require this analysis because "indirect effects" cannot be considered and the small business panel process only applies to three agencies. We believe this process is helpful and has saved billions of dollars in regulatory costs for small businesses. The Subcommittee and its Members should support reforming the RFA along the lines of the H.R. 527, the Regulatory Flexibility Improvements Act which has been favorably reported out of the House Committee on the Judiciary and is being marked up this week in the House Committee on Small business. We believe this is a significant opportunity for bipartisan regulatory reform.

APA Reform – The Administrative Procedure Act (APA) turns 65 this year. Though it is by no means ready for retirement, it could use some updates and reform. This Act emerged from the rapid increase in regulatory activity brought on by the New Deal. Its supporters believed that the public and regulated entities were entitled to fair notice and an opportunity to comment and participate in rulemaking and to make full use of the courts when an agency acted irrationally or contrary to congressional enactments. Much has changed over those 65 years in the composition of agencies, the complexity of rulemaking and their reliance on highly technical scientific information. Our administrative process has not kept up with some of those changes. We recommend that the Subcommittee endorse reforming the APA to incorporate the principles and procedures of President Obama's Executive Order 13563 and President Clinton's

Executive Order 12866 into the DNA of how every rule is developed. This would create greater certainty about the expectations of agencies when developing regulations and would improve regulatory outcomes.

U.S. Congress – The U.S. Congress is a fundamental institution in the regulatory process. Congress produces the authority for the agencies to issue rules, so it is also responsible, along with the Administration, for the current state of affairs in regulation. While Congress does consider some of the impact of the mandates it may be imposing on the private sector through regulatory authority it grants in law, it has less institutional capability for analysis of those mandates than the Executive Branch. Congress does not have a group of analysts who develop their own cost estimates of proposed or final regulation.

Over the last two decades, there have been proposals in Congress to create a congressional office of regulatory analysis. As Congress has a Congressional Budget Office that is a parallel institution to the OMB, so too should it have a parallel to OIRA. This could encourage more thoughtful analysis of the regulatory authority Congress grants in statutes, provide Congress with better tools to analyze agency regulations and allow Congress to engage in more holistic reviews of the overlapping and duplicative statutory mandates that have accumulated over the years. We believe this is an important part of rethinking the institutional design of our regulatory system.

Sunsets/Retrospective Review – To truly build a culture of continuous improvement and thoughtful retrospective review of regulations, the process must be institutionalized and be made law. The best incentive for high-quality retrospective reviews of existing regulations is to automatically sunset rules that are not affirmatively chosen to be continued. If an outdated rule has no defender, no continued need for existence, or is shown to have decreased in effectiveness over time, it should be sunset.

The power of inertia and the status quo is very strong. If there is no necessity to review old regulation, it will not be done, and we will end up with the same accumulation of conflicting, outdated and often ineffective regulations that build up over time. There is no natural constituency for regular cleanup of our Code of Federal Regulations. These types of systems need to be put in place throughout government to ensure regulatory programs are thoughtful, intentional and meet the needs of our changing economy.

OIRA – The Office of Information & Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB) is the central clearinghouse for non-independent agency significant rulemaking. It applies a critical screen to the contents of regulation, agencies' analytical rigor, legal requirements affecting the proposal and the President's priorities and philosophy. This review does not take place anywhere else in government. Single-mission agencies are frequently effective in accomplishing their objectives. Their intense focus on a relatively narrow set of policies can weaken their peripheral vision, however, including their assessment of duplication between agencies, cumulative impacts of similar rules on the same sector of the economy, or other broader considerations. OIRA is the only agency that brings to bear a government-wide, economy-wide perspective. For that reason, OIRA is a critical institution in our regulatory process for conducting centralized review of agencies' regulatory activities, facilitating interagency review, resolving conflicts and eliminating unnecessary duplication.

Despite its critical function, even as the size and scope of government has increased, OIRA has shrunk. As OIRA's staff was reduced from an FTE ceiling of 90 to 50 employees, the staff dedicated to writing, administering and enforcing regulations across all agencies increased from 146,000 in 1980 to 242,000 in 2006 (see Figure 1). As OIRA's budget was reduced by more than 50 percent, or $7 million in real 2000 dollars, all regulatory agencies' budgets increased from $12.9 billion to over $36 billion in real 2000 dollars (see Figure 2). To ensure that OIRA is able to fulfill its current mission,

additional staff and resources are necessary. A modest investment in this institution will pay back significant returns to the entire economy.

U.S. Department of Commerce – When the Department of Commerce was reorganized to include an assistant secretary for manufacturing and services, the Office of Industry Analysis was created to assess the cost-competitiveness of American industry and the impact of proposed regulations on economic growth and job creation before they are put into effect. This office has developed the analytical tools necessary to perform those functions and to provide the Department of Commerce with a strong, thoughtful voice within the interagency review of proposed regulations. The Department must speak for manufacturing when rules are being considered. Recent efforts have sought to redirect and undermine the Department's ability to participate effectively in a competitiveness review of regulation. We believe this Subcommittee should recommend that the Secretary of Commerce halt efforts to limit this office's role in regulatory review and strengthen its capabilities so that the Department can strongly support the President's Executive Order 13563 on Improving Regulation and Regulatory Review and to further improve the institutional design of our regulatory system.

SBA's Office of Advocacy – The U.S. Small Business Administration's (SBA) Office of Advocacy is an independent office consisting of fewer than 50 economists and lawyers whose job is to help federal agencies implement the Regulatory Flexibility Act (RFA) and its amendments. Its resources should be augmented to handle the expanded panel process envisioned in H.R. 527 and to increase its effectiveness.

Information Quality/Peer Review/Risk Assessment – As a corollary to the above, the process by which government relies on complex, scientific information as the basis for rules should be improved. Efforts to improve the quality of the information, to encourage peer review of significant data and to create consistent standards for agency risk assessment have been attempted across administrations. The Subcommittee should

recommend further improvements to the Administration's initiatives on transparency and use of objective data in regulatory proceedings to produce better informed regulations.

This Subcommittee is unique in its jurisdiction because it has the Safe Drinking Water Act within its purview, which serves as a model for current and future regulatory statutes. The Act requires benefit-cost analysis of standards and requires them to be based on the best available peer-reviewed science and requires transparency for the risk estimates. Reforms of other environmental statutes along these lines would significantly improve regulatory outcomes.

Infrastructure Project Delivery – An often overlooked piece of regulatory reform is the regulatory process we impose at the federal, state and local levels on permitting for infrastructure projects. Our current system is a product of unintentional design with a myriad of overlapping and duplicative processes that lead to extensive delays and higher costs for both privately-funded and government-funded projects. As we seek to invest scarce federal resources in our nation's infrastructure to support our economy, federal agencies should not overlook the need to improve infrastructure project delivery by eliminating redundant activities such as duplicative federal reviews and approvals that states are capable of performing. The time and efforts of federal officials are best spent ensuring stewardship of federal funding at the programmatic levels, rather than project-by-project assessments, because states have proven to be effective managers of the project review process.

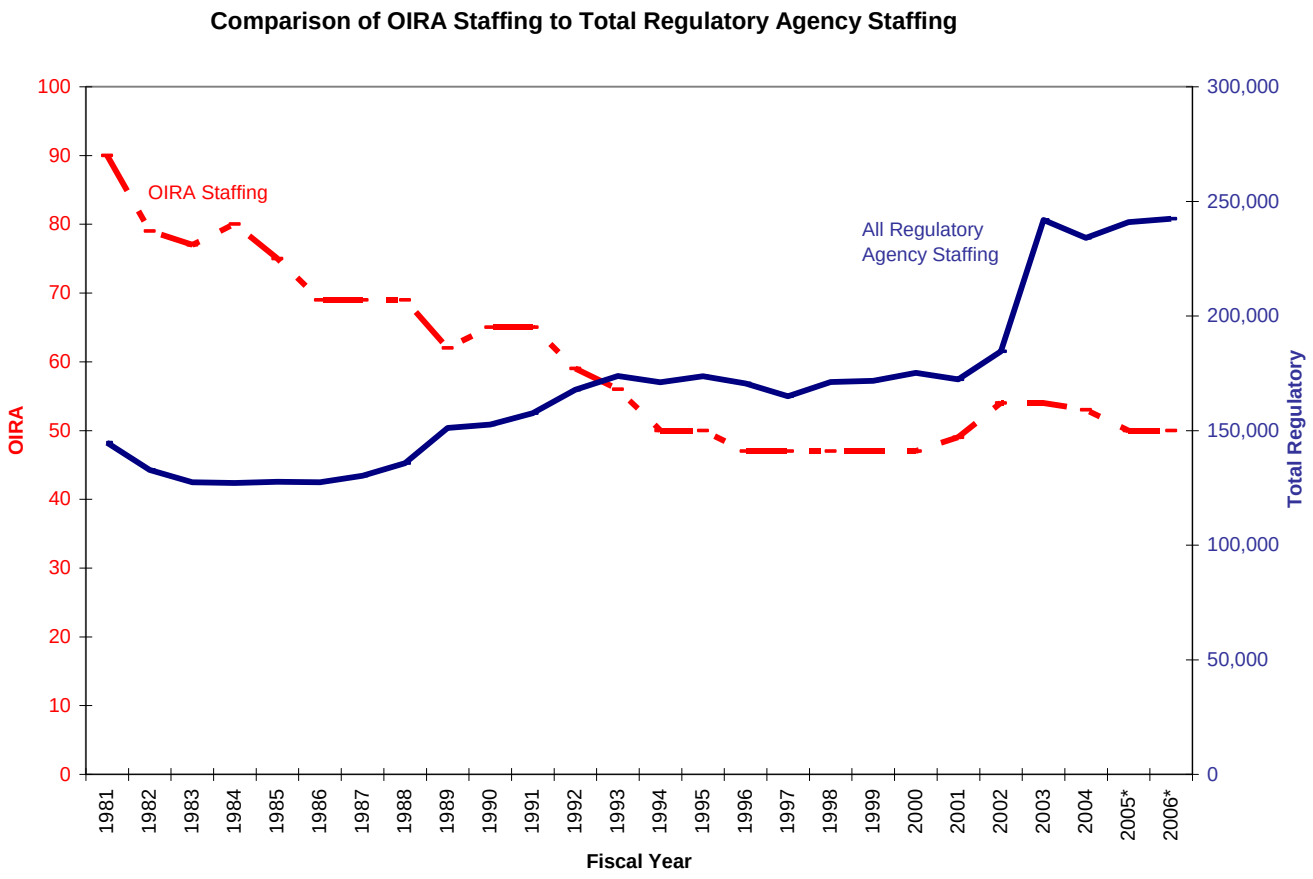
While efforts have been made to streamline and reduce the time it takes to conclude the environmental review process for federally-sponsored highway projects, it still takes 13 years or more to advance a highway project. That is too long for suppliers to the construction industry and end-users of the system. According to the National Surface Transportation Revenue and Policy Study Commission, reducing the project

delivery time from 13 years to 6 years could reduce the cost of a project by almost 40 percent, making far better use of taxpayer dollars.

Other federally-sponsored infrastructure projects are in need of a changed project management approach as well. The Army Corps of Engineers inland waterways lock and dam replacements take far too long to complete, driving up costs that far surpass the rate of inflation. As a workhorse for a variety of domestic industries, including power generation, energy, chemical and agriculture, the nation's inland waterway system requires a more focused effort to ensure resources are dedicated to project completion. The average time to complete a major lock replacement project has ballooned from just over 6 years in the late 1980s to nearly 17 years today, driving up costs beyond what Congress has authorized for such projects. While a new business model is needed that is dedicated to reducing federal bureaucracy and improving project delivery, users of the nation's river systems will lose out to foreign competitors when the aging system proves inefficient and unreliable for the many industries it serves.

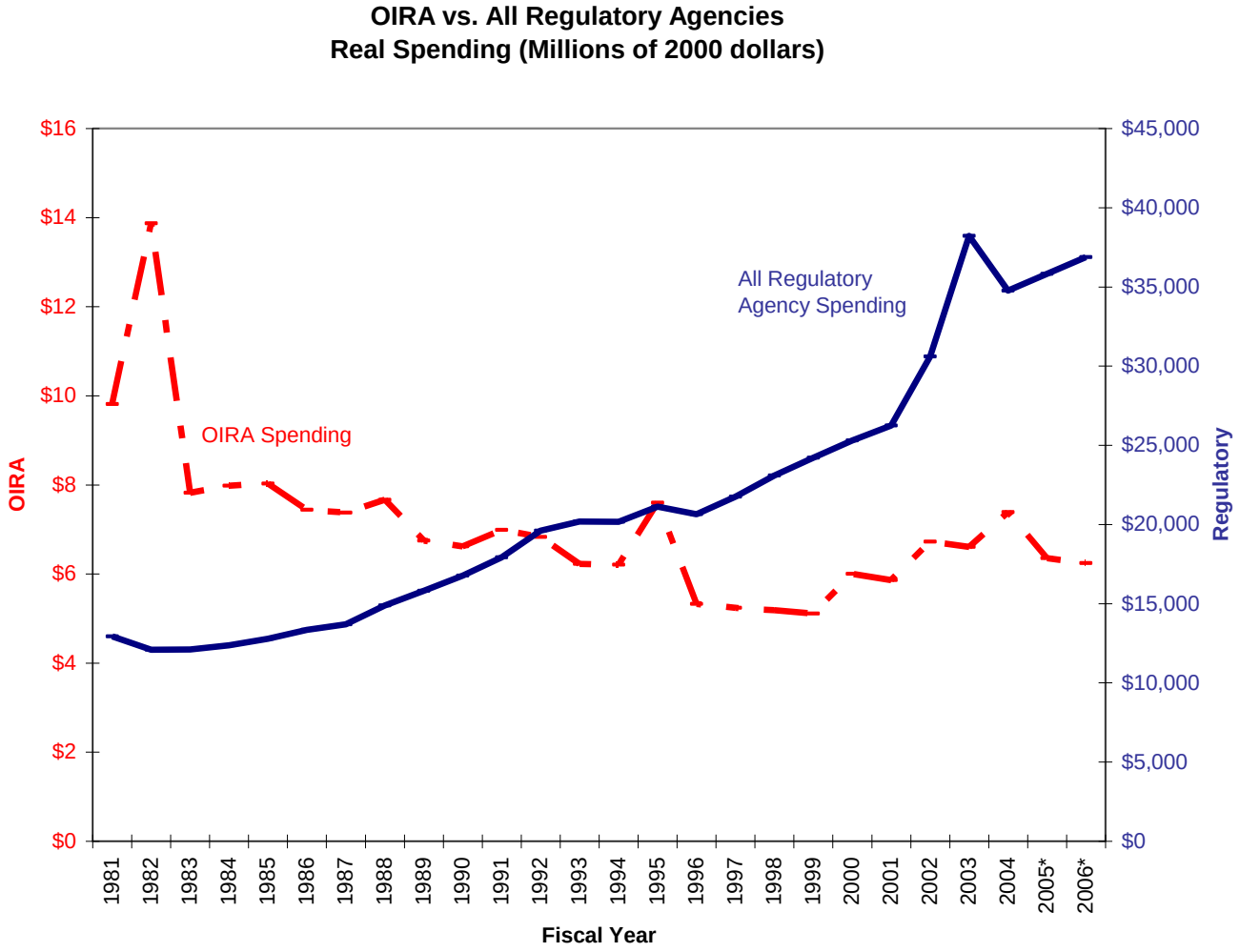
Thank you for the opportunity to share our views on proposals for improving the regulatory system and increasing the competitiveness of our economy. We are committed to working with you to advance legislation, as outlined above, that will restore common sense and thoughtful analysis to federal rulemaking.

Figure 1



Sources: OIRA: *Office of Management & Budget Directories* 81-01, OMB provided data 02-06; agencies: *Analysis of the U.S. Budget*, Dudley/Warren, Weidenbaum/Mercatus, various years.

Figure 2



Sources: OIRA: *Budget of the United States*, various years; agencies: *Analysis of the U.S. Budget*, Dudley/Warren, Weidenbaum/Mercatus, various years.